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Goodwin

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TRIAL

OF

Robert M. Goodwin

IN THE COURT OF SESSIONS, FOR THE CITY AND COUNTY OF NEW-YORK, MARCH TERM, 1820,

ON AN INDICTMENT OF

MANSLAUGHTER,

FOR KILLING

James Stoughton, Esq.

IN BROADWAY, IN THE CITY OF NEW-YORK, DECEMBER 21, 1819.

Reported

BY A GENTLEMAN OF THE BAR.

NEW-YORK:

PRINTED BY JOHN LOW, 139 CHERRY-STREET.

1820.

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INTRODUCTION.

The following is a brief history of some of the incidents which preceded, and are said to have led to the melancholy affair, of which a more extended account is presented in the following pages.

It is given to satisfy the public curiosity which has been so much excited respecting those incidents, and rests upon the authority of one of the very respectable counsel engaged in the causes mentioned.

Libels where filed by the Portuguese Consul against Robert M. Goodwin on the instance side of the admiralty court, in four different causes, to recover the amount of property belonging to Portuguese subjects, captured by the Athenian, alledged to have been owned by the said Robert M. Goodwin, and warrants were issued against the said Robert M. Goodwin; upon which, by an order of the District Judge, he was to be held to bail for a very large amount, ($195,000.) Mr. Goodwin was arrested on those warrants early in September last, by two deputized marshals; the one a clerk of Mr. Stoughton; and the other, one of the city marshals,—on his arrest Mr. Goodwin was permitted to remain in the City Hotel under the charge of the marshal, until the return of the warrants, when he was confined in the gaol of this city.—Several applications were made by the Counsel of Mr. Goodwin for his discharge on common bail; on the grounds, that the Portuguese Consul, as such, had no right to commence suits for damages; and that the Court had no jurisdiction. The several applications for his discharge having proved unsuccessful, Mr. Goodwin, on motion of his Counsel, was finally admitted to his *Juratory Caution*.* On this investigation *a minute and severe scrutiny was made into the pecuniary concerns of Mr. Goodwin*: the enquiry, however, resulted in the discharge of Mr. Goodwin, on his entering into a stipulation, with security, to the amount of twenty thousand dollars, for his personal appearance at the next term of the District Court, to be held in the ensuing month of May.

* A term known to Admiralty jurisdiction, implying a process of Bail, milder than that at common Law, and often, perhaps much more rational and just.

The effect of the catastrophe upon the public mind, may be gathered in some measure, from the following extracts from the Gazettes of the day.

From the Evening Post of Dec. 23.

"LAMENTABLE OCCURRENCE.—It is our painful duty to state the fact, that the day before yesterday, about 3 o'clock, in Broadway, James Stoughton, son of the Spanish Consul, and one of the finest young men at the New-York Bar, was stabbed to the heart with a short sword, concealed in a stick, by R. M. Goodwin, of Baltimore. Mr. Stoughton never spoke after receiving the fatal wound, which terminated his existence in about 10 minutes. It will naturally be expected that we should mention some of the circumstances, that led to this fatal rencounter. But as the unfortunate, who committed this act, is now imprisoned to await his trial, his critical and awful situation forbids us to state any thing that may have a tendency to prejudge his case.

Mr. Goodwin immediately left town in the Steam Boat Atalanta, for Elizabethtown, (N. J.) but was followed by our police officers, arrested, and brought back on Tuesday night and lodged in the city prison.

"DEC. 24.—The verdict of the Coroner's Jury, consisting of 24 respectable citizens, all of whom signed it, not only stated the fact of the stabbing, but went on to pronounce the precise legal crime, in the form and words of an indictment, namely, that the said R. M. Goodwin, is *Guilty of Murder of malice afore thought.*

[*It is now known that Goodwin returned voluntarily when called on at Elizabethtown by a deputation of the New-York Police, who had not yet received nor applied for authority to arrest him from the executive of N. Jersey. It is but justice to note it.*]

Yesterday afternoon the funeral obsequies of the unfortunate and deeply lamented Stoughton took place, from his father's house. It was attended by an immense concourse of people of all descriptions, amounting to many thousands, desirous, on the one hand, of shewing their respect and esteem for the deceased, and for his family, and on the other of testifying the public abhorrence at such scenes, of violence and bloodshed in our public streets. We conclude in the words of the Daily Advertiser.

"The party by whom Mr. Stoughton's death was caused, is in confinement, awaiting his trial. To the justice of the country we leave him with the addition of a single remark,

that the feelings of the citizens at the idea that human life could be thus destroyed by the hand of violence, for any cause that may be supposed, in our streets, and in the presence of multitudes of our citizens, has been that of unmingled abhorrence. The fact argues much in favour of the moral sense of the community—we hope it may never be less acute than at the present time."

The following was the opinion of the Court of Sessions, delivered by his Honor CADWALLADER D. COLDEN, Mayor of the City and County of New-York, on the 19th of February last, on the application of R. M. GOODWIN, confined in prison for the death of J. STOUGHTON, Esq. to be admitted to bail; and which is inserted as well for the light it throws on the general subject as for its intrinsic ability. Counsel for the prisoner, Messrs. *P. J. Munroe* and *S Price*. For the prosecution, Messrs. *Wells*, *Griffin*, and *Blake*.

NEW-YORK GENERAL SESSIONS.

The People, vs.

ROBERT M. GOODWIN.

On application to bail on the 7th of January last, the Grand Jury of this Court presented an indictment of Manslaughter against Robert M. Goodwin, the prisoner at the bar, accusing him with having feloniously killed James Stoughton. The next day the prisoner was arraigned on that indictment, pleaded not guilty, and on being asked if he was ready for his trial, he answered he was not. An application was then made to bail the prisoner. The Court intimated their opinion that it was not of course to bail on such a charge, and the matter was no further moved at that term.

At an early day in this term the counsel for the prisoner moved that his trial should be brought on in the course of the term, or that he should be discharged, and if not discharged, that he should at least be bailed.

On that occasion the public prosecutor stated that an inquest had been found against the prisoner for the murder of James Stoughton, the person who, by the indictment for manslaughter he is accused of having feloniously killed. That the inquest had been by the Coroner put on the files of this court, and that it was intended to try him on that inquest at a Court of Oyer and Terminer, which would be held in this city for the purpose, as soon as the duties of the judges of the Supreme Court as members of the Court of Errors, and of the Council of Revision now in session at Albany, would

permit one of them to preside at an Oyer and Terminer here. That on this account he avowed that it was not his intention to try the prisoner in this Court, nor would he consent to his being bailed or discharged. The Court declined granting the application at that time, but consented at the request of the Counsel to hear the application anew. And now on the last day of the next term after his indictment, the prisoner applies to be bailed on the charge of manslaughter.

A Court constituted as this is, ought in my opinion cautiously to refrain from deciding any point of law in which their decision is not absolutely necessary to dispose of the case immediately before them. We may, I think, give our judgment on the present application without giving any opinion as to many of the important points raised on the learned and able arguments that have been submitted to the Court.

I shall in the first instance consider this subject as if it were to be decided on the supposition that the prisoner stood before this Court indicted for manslaughter only. And shall therefore for the present put out of view every other circumstance. The question then is whether the Court ought in this indictment for manslaughter, as a matter of course, merely on the prisoner's application, to admit him to bail.

The power of the Court to bail for this offence under any circumstances, has been questioned by the Counsel for the prosecution. But it seems to me that the power to bail must be incident to the power to hear and determine. We have certainly power to discharge altogether. It is expressly given to us by statute under certain circumstances and without statute, it necessarily belongs as it appears to me, to a court having the power to try as to all cases to which such power extends. If we have the power to grant a gratuitous discharge, it must follow I think, that we have power to discharge *sub modo*. If we may discharge without bail, *a fortiori*, we may discharge upon bail. The case which upon its being first read, I did consider from Salkeld in opposition to his position, I think has been satisfactorily met by the observations of the defendant's Counsel, and has been shown to be reconcilable with what I understand to be the law.

But I should wish to give this point a more deliberate examination before I venture to give a decisive opinion upon it. I do not mean to give such an opinion at this time, because I believe it is not necessary that I should. For the present question does not in my mind turn upon the power of

the Court. It is enough to consider whether, supposing the Court has a discretionary power to bail, they ought now to exercise that power.

It seems to be admitted that where a person is charged with any felony (above the degree of petit larceny, as to which there is a statutory provision) he cannot demand bail as of course, and that the Court or Magistrates, having the power, is to bail him or not at their discretion.

Legal discretion never means, either in Criminal or Civil law, arbitrary will.

Legal discretion is always to be governed or directed by known and established rules, and in truth cannot be otherwise applied than to decide whether facts bring the case within the operation of such rules.

The well established rule of law applicable in this case is, that a person fully and explicitly charged with a felony cannot be bailed unless there be something presented in opposition to the charge which may raise a presumption in favour of his innocence, or at least it must appear indifferent to the Court or Magistrate called on to bail him, whether he be guilty or not.

It is unnecessary to recapitulate the authorities which have been cited to this effect. It has been the law of England and of this country since the time of the statutes of Edward the first. No case has been cited to the contrary. And I never knew of any practice of this Court, or any other that violated a rule, a strict observance of which appears to me to be absolutely necessary to a due and impartial administration of law. Of that administration which shall put the poor and the rich on an equal footing in a Court of justice.

This rule is not disputed by the Counsel for the prisoner: they contend, however, that the maxim of law that every man is to be presumed innocent till he be found guilty, applies to this case at this time. But it is obvious that this argument would lead us too far—for if it would now apply it would at all times reach every case. And if it is not always to be adopted, then it would follow that in every case the accused must be let to bail. The truth is, that this just and benign principle is not applicable, except when the accused is on his trial, for the purposes of securing his person to answer to a direct and positive charge, made in due form, and to bring him to that trial, we are bound to treat him as if he were guilty—at least we must do so until some matter be presented in his favour, which in the exercise of our discretion we shall judge a presumption of his innocence.

In this case nothing of that nature is offered. The prisoner is not only committed on a charge of felony fully and explicitly expressed in the warrant of commitment, but he stands charged with a felony of manslaughter by the indictment on the files of this Court.

It appears to me in vain to say that the public prosecutor is to produce further evidence of the guilt of the accused, than the commitment or indictment, when the law says that he must raise a presumption in favour of his innocence. It can only mean that he must destroy the presumptions which must necessarily arise against him from these accusatory documents.

In some instances indeed the Magistrate or Court may look into the testimony on which the accusation is founded, and if it affords the presumption in favour of the prisoner's innocence, he may be bailed.

A second ground however of this application is, that the trial of the prisoner on the indictment for manslaughter has been so long delayed that he is entitled to be bailed, if not discharged.

I have no doubt if there be any unreasonable delay in the prosecution of an indictment which this Court may try, it ought to interpose its authority and relieve the accused from the oppression of an unnecessary and unwarranted imprisonment.

We are then to enquire whether there has been such delay in this case.

As I have already stated, the prisoner was indicted and arraigned the last Term, that he then said he was not ready for trial, and at this second term his Counsel have moved for his trial, which the public prosecutor has avowed he did not mean to bring on.

A statute of this state provides that if any person indicted shall not be brought to trial at the second term of the Sessions after the commitment, he shall be discharged as far as relates to any treason or felony for which he was committed, unless satisfactory cause be shewn by the public prosecutor for not bringing him to trial.

The application to the Court is not to discharge the prisoner, but to bail him. If the Court thought him entitled to his discharge they could not refuse to admit him to bail.

Under the provision of this statute, the prisoner would be entitled to his discharge unless the public prosecutor has shewn satisfactory cause for not bringing him to trial.

The only cause he has shewn is, that by a coroner's inquest

the prisoner is charged with murder—and the public prosecutor avows his intention to arraign the prisoner on that inquest in the Oyer and Terminer, where by law it is returnable; and which court has solely jurisdiction of the crime which it charges.

We have then to decide whether this court ought to consider the existence of the inquest as satisfactory cause for not now putting the prisoner on his trial.

This inquisition I have no doubt is improperly on the files of this court. It ought to be in the hands of the coroner until returned pursuant to the statute to the court of Oyer and Terminer. Yet I think this court is bound to take notice of it. We may consider it as presented to us by the public prosecutor in the hands of the coroner; or it appears to me we are bound to receive the representation of the public prosecutor, of the existence of the inquisition, and of his intention to proceed upon it. Circumstances may exist when we should be obliged to accept this evidence of a no less solemn and important fact, as to which I do not know how otherwise we could obtain information. Suppose that the prisoner instead of being now charged with a coroner's inquest with murder, had at the last Oyer and Terminer been indicted for that crime; and that the last grand jury of this court had notwithstanding presented the indictment for manslaughter now on our files—How could we have obtained knowledge of the proceeding in the Oyer and Terminer, but by the information of the public prosecutor? At any rate I think this inquisition is so before us as that we are bound to take it into our consideration.

Supposing for a moment, that this inquisition is equivalent to an indictment, and that the prisoner may be arraigned and convicted upon it in the Oyer and Terminer; then can this Court, consistent with its duty, take any step or pursue any course which might interfere with that jurisdiction which the laws of our country have committed to a higher tribunal? We have no cognizance of the crime of murder. Shall we then adopt measures which will arrogate to ourselves the disposition of an accusation on which it belongs to our superiors to decide? If we were to try the prisoner on the indictment for manslaughter, unquestionably we should put an end to the prosecution for murder—and is there not a great inconsistency in saying that this inferior tribunal can or ought to pursue such a course as to take to itself the decision of a matter which does not belong to it, but which

by the Constitution and laws of our country is delegated to a superior Court? If the inquisition be equivalent to any indictment, then in virtue of the inquisition, the case of the prisoner is as much attached to the Oyer and Terminer as if there was an indictment of that Court to the same effect. Suppose, then, that after an indictment in the Oyer and Terminer, a grand jury in this Court were to find a bill on the same facts for murder; it seems to me that every one will admit that it would be absurd to say that because the session grand jury had chosen to find a bill for manslaughter, that we could and ought to proceed on that bill, and thereby oust the Oyer and Terminer of the trial and decision of the cause. If this doctrine were to prevail, it would utterly confound all jurisdictions. I cannot see why the indictment for manslaughter should be allowed to interfere with the inquest for murder more than if a grand jury, after having found an indictment for larceny in this court, should afterwards find an indictment for trespass on the same facts, the latter should be allowed to interfere with the former.

It is admitted that in England the inquests is equivalent to an indictment; but it is said that we ought not so to consider it, because by the Constitution of the United States, no man can be held to answer upon it. This is a question I do not mean to take upon me to decide. The law of our state, which has been revised several times since the adoption of the Constitution, not only points it out as a mode of prosecution, but provides that the Justices of Oyer and Terminer shall proceed thereon: And it is admitted that in several, at least, in more than one instance in this state, persons have been put to answer on coroner's inquests—Would it not then be a most unwarrantable presumption in this Court to act on their own opinion, when that opinion was in opposition to repeated legislative acts and to the decisions of tribunals to which we are unquestionably subordinate? We have been asked if the document now presented to us, and which purports to be an inquest of the Coroner, were manifestly defective; as for instance, if it should appear to have been the finding of only eleven jurors, if it should want seals or the name of the Coroner, yet would we then suffer it to control us in the administration of justice? I answer, certainly not. For then it would be no inquest. It would be only requiring us to open our eyes to see that it was not; and in determining to disregard it, we should not be exercising the highest judicial function, and in opposition to the Legislature, and superior Courts, deciding a great constitutional question which in my mind, belongs to another tribunal.

I am, therefore, of opinion, that when the public prosecutor shewed us the Coroner's inquest, accusing the prisoner of th murder of the same person who is charged by the indictment on our files with feloniously killing, the public prosecutor has shewn sufficient cause for not bringing the prisoner to trial, and that we ought not, whatever our power may be, as to the charge of manslaughter, at this time, either to bail or discharge him.

I beg it to be observed, that my opinion is that we ought now, at this time, to receive the inquest as a satisfactory cause, shewn by the public prosecutor, or the delay which has taken place. I by no means intend to say that it should always considered.—I think this Court and no other Court could leave the prisoner at the mercy of the public prosecutor. We never will suffer the duration of his imprisonment to depend on the pleasore of the Attorney for the People. Our laws have taken good care to guard against oppression by their administrators, and it is our duty to see that their provisions in favour of humanity, and the liberty of the citizens are duly enforced. If, therefore, it should appear to us that there is any wanton, or even unnecessary delay on the part of the public officer; if after there has been an Oyer and Terminer in this county, no measures should be taken on the inquisition, or if the prisoner could justly complain of delay in the appointment of such a Court, then I think an application like the present would call upon us to decide as to the extent of our powers, and whether we would not exert them for the relief of the prisoner. The opinion now delivered goes no further than to decide that if we may, at our discretion, bail the prisoner on an indictment for manslaughter, we do not think it would be a proper exercise of that discretion, to bail him under existing circumstances. The application is therefore refused.

The Mayor then stated, that the opinion just delivered mus, be no farther considered as the opinion of the Court, than as it expressed a determination not to admit the prisoner to bail at present,

COURT OF SESSIONS,
For the City and County of New-York,
MARCH TERM—1820.

THE PEOPLE,
vs.
ROBERT M. GOODWIN.

The Court assembled at the City-Hall, March 14th, at 11 o'clock, A. M.

PRESENT,
His Honor the Mayor, CADWALLADER D. COLDEN,
JOHN B. THORPE, } Aldermen.
STEPHEN ALLEN, }
JAMES L. BELL, Sheriff.
JOHN W. WYMAN, Clerk.

Counsel for the People.
PIERRE C. VAN WYCK, District Attorney,
JOHN WELLS,
GEORGE GRIFFIN, and
D. T. BLAKE.

Counsel for the Prisoner.
THOMAS A. EMMET, P. J. MUNRO,
JOSIAH O. HOFFMAN, S. PRICE,
DAVID B. OGDEN, J. A. HAMILTON.

JURORS SWORN.

James Glass, *James Hallet,*
Garrit Van Cleef, *Jason M. Bass,*
John H. Seaman, *Peter Crawbuck,*
Israel Horsefield, *John Thompson,*
Charles Gordon, *John Redmond,*
Joseph M. Clark, *John Vanderpool,*

The Jurors were severally asked the two following questions, which were suggested by Mr. Emmet, as what the Prisoner's counsel would agree to, in lieu of all challenges, having no other object but to secure a fair and impartial jury—who had not committed themselves by a predetermined opinion, derived from a *partial* knowledge of facts, or who had not been led to enlist their feelings to an extent which might prejudice their ultimate decission; which was acceded to by the counsel for the prosecution.

1st. Have you heard any thing in relation to this trial, so as

to have made up your mind in relation to the guilt or innocence of the prisoner?

2d. Have you any bias for or against the prisoner now put upon his trial?

The three first of the jurors, however, it should be remarked, were sworn, on asking them the common questions of influence, but without a formal challenge.

The prisoner was put to the Bar, the indictment read, and Van Wyck, District Attorney, then proceeded to open the case on the part of the prosecution. He began by stating to the Jury that the occurrence, which had given rise to the present prosecution, was one which had excited very great sensibility in this community. It might, perhaps, be considered honourable to our citizens that it had. It is an honourable characteristic and one which, in the nature of things, must be peculiar to a free people to entertain a proud consideration of their rights, and to arouse promptly at the sight of aggression. The right of personal security is, beyond all others, precious—it is the basis of all the enjoyments—of all the happiness of the social, civilized state—the foundation stone on which the whole fabric of society must rest.—Destroy that right, and all are destroyed. For when society has become so depraved that life is unsafe in the usual resorts of men, our condition is hopeless.

I shall proceed, gentlemen of the Jury, to the facts on which the indictment, in this case, is founded; and the evidence, which I am fully satisfied we shall be able to bring forward to support them.

On the 21st of December last, in one of the most frequented streets of our city, about three o'clock in the afternoon, the prisoner made an attack upon James Stoughton, Esq. with wicked and felonious intent, and took his life. An affray took place that day, which ended in the mortal deed, and in which the prisoner, probably from some previous excitement and ill will, gave the provocation.—That he met the deceased on the day mentioned, in the street, and shaking his cane at him, as is said, remarked to some one in company with him, or near him, there goes a *liar and scoundrel*, or a *liar and a coward*, or some words to that effect, and of a very aggravating nature.

The deceased turned to him, and asked, "do you repeat your words—do you apply them to me?"—The prisoner said he did, and the deceased thereupon struck him.

Upon that, the prisoner turned upon him—seized the sword

of a sword-cane, and struck the deceased such a blow that he never spoke after! A coroner's Jury was held upon the body and returned a verdict of Murder.—I make a remark here, that it is the opinion of persons of the most respected learning, that it is a wrong and obsolete course to try the accused on a Coroner's Inquest, and, referring to the Constitution, it seems to ordain that no man shall be brought to trial in a case like the present, without a previous finding of a *Grand Jury*. The present, therefore, will be the only trial of this offence. I mean not by mentioning the Coroner's proceeding, at all to influence the present trial, or produce any bias on your minds unfavourable to the prisoner. It is only for an illustration of the precise grounds on which this trial proceeds.

It is proper that I should read you, from the books, some of the legal principles by which, in connection with the facts, it is expected the Jury will be guided in the discharge of their duties. The Attorney for the people here read from *East's Crown. law* 1st. vol. 232—238—239.

Mr. Van Wyck closed, with observing, that it might be said that the act in question was done by the prisoner without thought, upon what ground that could be said he could not possibly, from any thing which he had learned of the testimony, discover. On the contrary, Gentlemen, said he, from all I can gather from the witnesses, the blow of death appears to have been inflicted with a dexterity as astonishing as the atrocity and cold malignity which marked the purpose of it. One thing you will find, for certain, that the blow could not have been given without human hands, and the conclusion is direct and irresistable, that it was designed, and the act of the prisoner.

WITNESSES FOR PROSECUTION.

Benjamin Clark, Esq. affirmed.

Van Wyck.—Please state what you saw of this transaction.

Clark.—The 21st of December last, in the afternoon of that day, I saw the prisoner and James Stoughton deceased, approach each other in Broadway, near Courtlandt-street. The prisoner struck Stoughton on the head with his right hand or fist, and knocked him down—Stoughton rose immediately and returned the blow, as appeared to me in the face or some part of the head—at that I came up and interfered, and took Stoughton by the collar with the right hand, and attempted at the same time to seize Goodwin by the collar

with the left, to part them. I failed however in my grasp at Goodwin, and my hand and arm passed across his breast. I looked the prisoner in the face, and exclaimed, gentlemen! fight in the street! Goodwin replied, he struck me first! I turned to Stoughton—looked him full in the eyes, and then for the first, recognised him. I looked him full in the face three or four seconds, he then threw up his eyes, fainted and fell—the by-standers caught him as he fell, and in falling he broke my hold and I let him go. I then looked at the prisoner and saw a dagger, or the sword of a cane in his hand. I assisted to carry Stoughton on the side-walk, or the stoop of the store next to the corner of Courtlandt-street and Broadway. Some person opened Stoughton's clothes—his coat waistcoat &c.

Question by Emmet.—What coat did he wear?

Ans.—Blue—a large blue over coat, with capes. I noticed that Stoughton's countenance appeared ghastly. I thought he was dying—some of the by-standers carried him into the store and I followed. I took him by the hand and called him by name—he made no response! I discovered a little blood on his shirt. I raised his shirt a little, & discerned the hole in it—he appeared to me to be expiring. I then left the store for a few minutes and when I returned found him dead.

Question by Van Wyck. How far off were they when you first saw them.

Ans. I was, say fifteen feet north of Courtlandt-street, and they were on the flagging on the opposite corner, further down—that is, just across Courtlandt-street—all on the West side of Broadway. Stoughton fell on the street, on the round pavement, upon his back.

The District Attorney here exhibited to the witness a sword-cane, but he had too indistinct a recollection satisfactorily to identify it. To other questions the witness answers, that the prisoner just as he saw him strike was from four to six feet from the south-west corner of Courtlandt-street and Broadway, and facing up street, or nearly so. Stoughton was on the side-walk, and fell full length on his back upon the pavement, so that his feet were a short distance from the flagging.

In answer to a question by the District Attorney, he said he saw the sword-cane after Stoughton fell the last time, Both he and witness were standing still; that he fell on his back, his hips striking first; that the look he gave witness first was full, stern and open; a bystander remarked

when Stoughton was falling the last time, that he was fainting, and some one caught him and broke his fall.

Cross examined by Mr. Hoffman.

You say, that in going down Broadway, you saw the parties meet, and the first thing between them was a blow by the prisoner, with his right hand, which brought Stoughton to the ground? *Answer.* Yes. And are you not confident the prisoner had no sword or cane? *Ans.* I saw none; my impression on that point is distinct. *After Stoughton fell the second time,* I observed the sword of a cane in prisoner's hand.

Question. Was not your attention at that time engaged with Stoughton? *Ans.* Yes. I only looked prisoner in the face two or three seconds, and sufficiently to see the sword in his hand, and then turned to Stoughton.

Ques. After saying to prisoner, "what fight in the street?" did you not keep your eye on Stoughton? *Ans.* I did; I kept him in my eye.

Ques. Did you look at all on the prisoner after that till Stoughton fell? *Ans.* I saw the sword in prisoner's hand, immediately after Stoughton fell the second time; and after that, was engaged intirely with Stoughton.

Ques. Was there a considerable crowd collected by this time? *Ans.* In two or three minutes there was gathered around quite a mob.

To other questions, witness answered, that when he first went up, there were several persons below the parties on the side-walk in Broadway. That after Stoughton was carried into the store, the prisoner passed deliberately with another gentleman, and some one pointed him out and mentioned his name, and as he passed, his gait was easy and natural, and he had his hat on. That at the first of the affray, the prisoner had his hat on, but when Stoughton returned his blow, thinks he knocked prisoner's hat off. The sword-cane in question was presented to witness; he thought it resembled much the same he saw at the time, that is, the head part, for the scabbard part he had not seen before—it was the same, or one similar.

Maltby Weed, Sworn.

Keeps store at the south-east corner of Broadway and Courtlandt-street; saw Goodwin coming down and Stoughton up Broadway. When they met, Goodwin shook his cane in Stoughton's face; but witness did not hear what words passed between them. Stoughton passed up a few steps and came back to Goodwin, when a few words passed between them, and Stoughton struck Goodwin: Goodwin

then struck Stoughton with his cane, and with the blow, the sheath part of the cane flew off—Stoughton fell. Before the blow was given, they might have talked together four or five minutes. On an instant reflection, witness corrected himself, and said probably not so long. Goodwin struck Stoughton, and Stoughton him, and instantly people gathered. I saw but two blows by prisoner or by Stoughton; think Stoughton had large capes to his coat. Witness saw the cane at the time, and in the Grand Jury room, and thinks it the same exhibited in court. Some one brought the sheath in the store, and he thought it the same. Stoughton fell on his back from the prisoner. And, as stated by Mr. Clark, the former witness, when asked, how long after Stoughton first struck and fell, before he got up? Witness replied that he did not get up again till somebody assisted him to rise. A stab might have been given, and witness not have seen it. They appeared, at the first of the scuffle, to be about equal—has heard that the person that went off with Goodwin, was a Mr. Cambrelling.

Cross examined by Mr. Hoffman.

When Stoughton and Goodwin passed, Goodwin continued on; Stoughton went on nearly or quite across Courtlandt-street, before he returned back; they met directly opposite Mr. Jacobus Bogart's house, and nearly opposite witnesses store. The encounter was within the curb-stones, on the corner. When Stoughton returned, a few words passed, when he struck Goodwin, and Goodwin then knocked him down; and witness did not see Stoughton rise again. When Goodwin struck Stoughton a blow, by which he fell, he took the cane by the butt. Stoughton immediately fell, and did not rise—a crowd instantly interposed. Witness was standing in his door, opposite, when the affray began—was not drawn to the door by the affray—Goodwin held the cane in his left hand, when he struck Stoughton, and his back turned obliquely to witness—after the affray, saw both parts of the cane lying in the street.

Dr. Mott, Sworn.

Dr. Mott testified that he called immediately after the affray and found Mr. Stoughton lying on the counter of the store, before mentioned, dead, and assisted to examine his body; that he observed a wound on the left side an inch or less in length. That the probe would not reach the bottom of the wound, and the body was then opened—it was found that the wound passed through the lower lung, and apex of the heart itself, and onward, indeed, to the breast bone. It

entered between the ninth and tenth ribs and nearer the back bone than the middle of the body; and the violence of the blow split a portion of the tenth rib; that it was made, doubtless, with a pointed instrument, and the dagger of the sword-cane exhibited in court, might have produced it; that the wound was from six to eight inches deep, and passed forward upward and inward. Dr. Mott was asked whether any wound could produce death so soon as the one in question? He replied decidedly, that there were other wounds, for instance, a wound through the root of the great artery—that from a wound like the present a man might live a very few minutes—he might live a few hours, and there were cases where life had been prolonged fourteen or fifteen days, when a ball had passed directly through the heart. Dr. Mott was pretty closely interrogated here by the counsel for the prisoner, and mainly by Mr. Emmet on these two points—first, whether from the nature and direction of the wound it were possible that it could be inflicted by a sword-dirk, in a personal contest, when the parties were face to face, and with a sword-dirk like the one exhibited in court; in the next place whether the strength of a man's arm could, with the weapon in question, and the obtruction of the edge of the rib, as mentioned, penetrate through the body so as to reach the breast bone on the opposite side, as it appeared the weapon in this case had done—he was also asked, whether a weapon with a handle so heavy, as the one exhibited, and entering the body in so perpendicular a direction might not fall out of itself, if lodged in the body, as the instrument which produced the death of Mr. Stoughton must have been;—The sword in question—it is here proper to observe, pertained to a pretty large sword-cane, had quite a substancial buck horn handle, and, with handle and all, about seventeen or eighteen inches long, with a proportionate handle of about five inches. As to the first point, it appeared to the Doctor all but impossible that the wound could have been inflicted by such a weapon in the supposed relative position of the parties. That in the next place, he could hardly answer that the strength of an ordinary man, in these days, could have inflicted the wound described, unless, indeed, in a very severe conflict; and as to the last point, that the daggers or sword might not improbably have fallen out or been withdrawn by its own weight, particularly with the aid it might have received from the action of the over coat Mr. Stoughton had on, if in any way drawn outwards. The object of the counselor for the prisoner in these interrogatories was to establish the presumption, that, some how, in the scuffle the

sword or dagger by getting entangled in Mr. Stoughton's clothes, or otherwise have got in such a position, that in falling he unfortunately run up the point of it, and, by his own weight, forced it to the mortal extent described, into his body. That then, as it appeared by the testimony of Dr. Mott, even such a wound might not instantly destroy the muscular energy. He rose to renew the encounter, and at that period the dagger was some how dislodged.

Dr. Perkins, Sworn.

Was called to see and examine the body of Mr. Stoughton, the lower edge of the ninth rib was split off by the violence of the blows, which the deceased received, and the wound, in other respects, substantially as has been described. The question was put to him, whether the ordinary strength of a man, with the weapon you have seen, could effect the wound which the deceased received? Yes, in my opinion it does not require any extraordinary degree of strength. The direction of the wound was formed upwards and inwards, that is, as he explained, towards the centre of the body,—he observed that the direction of the wound must, from the nature of it, proceed towards the centre of the body. He was asked, if the dagger, or sword, was lodged in the body, in the way supposed, by any force, no matter what, whether it might fall out of itself? Doubtless, he said, it might. A good deal of severe interrogatory was passed on Dr. Perkins, on the possibility of this or that kind of blow, effecting the dissolution of the deceased. The inquiries were carried to a great extent, till in fact, his Honour the Mayor enterposed and suggested, that where professional men were called on any inquiry, they should only be required to answer such questions, as fell within the fair scope of professional science; he was the more confident to speak in this manner as the question had been again and again settled in Selfridge's trial at Boston.

William Weir, Sworn.

Examined by Mr. Van Wyck. Did you see any part of this affair? *Ans.* I was coming up on the right hand of Broadway, in the afternoon of the day mentioned, when I saw two gentlemen scuffling in the street, nearly opposite me; they were closed about ten or fifteen seconds in the scuffle—Goodwin struck Stoughton several blows, by which he fell near the middle of the street, with his head towards Maiden Lane; after he fell, Goodwin made several blows at

him while he was down, on which I crossed over the street, and by the time I arrived, they were both on their feet; at the same time Stoughton made an effort to meet Goodwin; the people rushed in and sustained Stoughton as he was apparently fainting, which drew my attention to him, and he almost instantly fell; he appeared to be dying. I then turned towards Goodwin and remarked to him, he had killed a man! When I saw Stoughton fainting, I saw a sword in Goodwin's hand. Stoughton leaned his hand on some one—Goodwin, at the same time, remarked, that he did not intend to draw the dagger—he held a hat in his hand, and observed it is not mine. Some one said to Goodwin, it is no matter, you may as well take it; Goodwin after went down Broadway with another gentleman.

Cross-Examined by Hoffman.

At first saw no person between him and the party—they were about the centre of Courtlandt street—rather nearer the south side—there was scuffling, and arms, and hands in motion.—Goodwin appeared to be striking with the head of the cane, and Stoughton retreating—thinks Goodwin struck Stoughton on the head after he was down—and witness feels as certain of that, as of any fact he witnessed—but they were both upon their feet after that—thought the whole fracas continued about four minutes.

Wm. Haycock. Sworn.

Was passing Broadway about 3 o'clock, and heard some one call out "*a fight!*" he looked over across the street and saw two men a fighting—one had a cane, or some arms; after two or three blows, Stoughton apparently fell—Goodwin jumped along side of him after he fell, and struck him several blows on his head, with a cane—witness saw only the handle of the sword-cane, while in the act of striking—the other part he thinks was off, at the time; as Stoughton was raised up, and leaned on some one, Goodwin looked over my shoulder in the crowd, and appeared as if designing to commence battle again. Some one said to him he had done *enough*, and he had better be off with himself—as Stoughton fell, some one said he had a fit—assisted to raise him, and get him on the walk; he did not speak at all—did not see Goodwin have the sword in his hand after Stoughton fell the first time, and was raised up—and saw only the butt of the cane when Goodwin was using it—afterwards, the sword was picked up, and some one, I think Mr. Weed, remarked, Stoughton had been stabbed with it—after he was

carried on the platform, Mr. Clark, I think, a quaker gentlemen, asked if any blood was seen—witness opened the body coat of the deceased, and perceived some; he was then carried into Meldrum's store, second door from Courtlandt street, in Broadway, his cravat taken off by one of the porters—he gasped and waved his hand faintly, as a man mortally wounded, and soon breathed his last.—Dr. Turner, and two or three others were in about the time—once he revived and raised partly up, his eyes rolled wildly round, and gasped his last.

Cross-examined by Hoffman.

Did not see Stoughton fall, till as before mentioned—was no nearer during the time of the principal transaction, than across the street, and while passing over. Mr. Ball and Mr. Weir, were with witness. Stoughton fell three or four feet from the curb-stone.

Leonard Baker, Sworn.

Said he was standing in Courtlandt street, six or seven rods below, looking directly up Courtlandt-street, towards Broadway—he saw two men engaged; one, Stoughton, wore a blue coat with full capes, and the other, Goodwin, a light drab of the same description—this took place at the S. W. corner of Courtlandt-street and Broadway—some words passed, and Stoughton fell off into Bradway, directly on his back. Goodwin was then over him, striking backwards and forwards on his face and head with his hands—whether with clenched fists or not, could not say. Mr. Clark, about this time, had his arms around Stoughton's body—he next observed Goodwin on the side-walk, with something like the sword of a cane in his hand, which he looked at, as much as a second, with an air of surprise, and threw it down—some one then put a hat on his head, and he walked with him down Broadway. Stoughton was down when he was striking him with both his hands—thinks his fists.—Witness is confident he saw no cane in the hand of Goodwin, till he saw him on the side-walk—the scuffle was on the side-walk, six or eight feet from the corner, and Stoughton fell off into Broadway, with his head towards Maiden-Lane. Goodwin appeared to be in a violent passion when he went away; and at first he had no hat on.

Alexander J. McWilliam, Sworn.

On the 21st Dec. about 8, P. M. as I was coming up Broadway, on the east side, I saw ahead of me, on the opposite

side, two men fighting; by the time I got nearly to Maiden Lane, one of them, Mr. Stoughton, was down, and Goodwin standing over him, in the act of striking. They were near the centre of Courtlandt street, at the intersection of Broadway.—I went over and saw Stoughton lying in the street—I took hold of his hand, and asked him to get up—he did not speak; and some person, with myself, raised him.—Goodwin was then on the side-walk—Stoughton stood about six seconds alone, and then leaned on me. They looked at each other, and Stoughton seemed anxious to speak to him; Goodwin had a sword, and a scabbord in his hand—when Mr. Stoughton was resting on me, I saw either the dagger or sheath in Goodwin's hand. Stoughton reclined on me, say 14 seconds, and then fell, and some other person recovered him. *Ques.* by Van Wyck—Was Goodwin doing nothing all this time? *Ans.* After Stoughton fell the second time, I saw Goodwin go into the store—I did not hear him say any thing at any time. We carried Stoughton into the cond store, and presently I saw Goodwin go down Broadway with another gentleman.

Cross-examined, by Hoffman.

Saw no blows with a stick or club, at any time—when he first saw them, he was half way between Maiden Lane and Liberty Street—when Stoughton was down, Goodwin did not strike him, though he attempted it. When Stoughton was raised, Goodwin had nothing in his hands; after that he had a dagger or sheath.—At first they were about five feet apart, Goodwin was on the side-walk, and some person between them—saw a quaker gentleman there, and think he assisted me to raise Stoughton up.

Thaddeus B. Phelps, Sworn.

Testified nothing very material in the first part of the affray. Said he did not see Stoughton fall—saw Stoughton leaning on M. Willian's shoulder, after he got up, and looking, with passion, on Goodwin—thought they were both preparing to renew the fight, but presently Stoughton fainted and fell in the arms of some of the by standers. The change from life to death was instantaneous—assisted to get Stoughton upon Gardner Antwerp's stoop, & losed his clothes, saw Goodwin in the crowd at the time. Some person asked, if Stoughton was not stabbed!—Oh, no, says another, the wound is on the head; upon which witness examined the head, and found nothing but a scratch over one of the temples. Stoughton was at the time, in the last agonies. Mr.

Cambrelling, at that time, came up to witness, and enquired how Mr. Stoughton was—witness told him he was a dead man—saw the cane as he was approaching the spot, but when he arrived, it was not to be seen—the crowd might have kept it from view—witness went out a few minutes, and when he returned Stoughton was dead—saw Goodwin after the affray, go down Broadway with a friend.

John Ball, Sworn.

As he was going up Broadway, on the east side, he looked over and saw Stoughton down, on the pavement, and Goodwin standing on the edge of the curb-stone—Stoughton arose, leaned on a gentleman's shoulder a short time, and fell back. Goodwin held the dagger between his thumb and fingers, slightly swinging it—he said somthing, but we did not hear what. He saw Goodwin during the scuffle holding the dagger near the butt, and striking Stoughton with the butt—dont know whether the case was on, or not—was surprised to see Stoughton immediately fall, as he did not see any blow inflicted of sufficient violence—Goodwin was striking Stoughton as he was falling.

Cross-examined by Hoffman.

Witness walked fast across the street to the scene of the affray. *Ques.* by Juror.—When Goodwin was stiking Stoughton over the head, did it appear to you, that the case was on? *Ans.* It did. They were close together, and Goodwin seemed to strike all his blows on the head.

Michael M'Gown, Sworn.

Was passing down Broadway, and saw two gentlemen at the intersection of Broadway and Courtlandt street, one struck the other with the butt end of a dagger; the latter was Mr. Stoughton, and he stepped back towards the middle of Courtlandt-street, and shortly fell. Mr. Goodwin then came up, and struck him on the head, while on the ground. Stoughton was defending his head with his hands—did not see Goodwin strike him any where else, but on the head. Stoughton retreated four or five yards before he fell, and gave no blows that witness saw. A gentleman in quaker's apparel came forward and took hold of Goodwin's hand—after Stoughton was down, Goodwin stepped back upon the curb-stone—Stoughton fell first on his seat, and then over on his back; I had no thought that he would fall when he did. They were so close together, that Goodwin could not possibly have knocked him down—the quaker gentle-

man being also between them. Stoughton was helped up, and men and boys came first from the opposite side of Broadway, to render assistance—saw Goodwin's hat off.

Doct. Charles G. H. Schieffelin, sworn.

Going down Broadway, he heard Mr. S. was stabbed, and was requested by the Coroner to go along with him to the place—did not like to take the responsibility upon himself—he delayed a little till Doct. Mott arrived.—The wound was 9 or 10 inches deep—There was only a splinter broke off the rib. Several other questions were asked Doct. S. which, from the lowness of his voice, and unfavourable situation, the reporter was unable to distinctly hear.

Doct. John Nelson, sworn.

He was called upon (by Mr. Phelps, before mentioned) to go with him to see a man, who had received an injury—he did know the name of the person whom he was to visit; but found it to be Mr. S. and when I came to him he was evidently lying in the agonies of death. The wound was about half an inch in length, and penetrated quite through the body, to the breast-bone. A question was asked, by counsel, whether a man of common strength, with the weapon in question, and with the obstacle with the edge of the rib, which had been mentioned, could inflict the wound? Doct. N. answered—that he was clearly of opinion it could, particularly if his muscular energy was increased, as it must have been, in this case, by a paroxism of anger; that with such an action he might perforate the body, and if not the breast bone, lodge the dagger in it.

Van Wyck. And so as to go between the 9th and 10th rib?—Yes sir—those ribs are weaker and more elastic than those situated higher.

Ques. Suppose this weapon was driven through the body, quite to the opposite breast bone, as appears; might it fall out of itself, the head of the instrument being pretty heavy, but still the skin yielding a measure of obstruction?

Ans. The skin would yield some impediment, be sure; but still I think the weapon might be withdrawn in the manner you mention. Doct. Nelson agreed that the wound was situated on the side pretty nearly as described. He found Mr. S's. case so desperate, he thought it was not worth while to do any-thing, and he died in 3 or 4 minutes. It seemed to be extremely difficult for him to get breath.

Cross examined by Emmet.

When you speak of the increased strength of a man in a passion, do you not mean that the weapon acquires an un-

minimum degree of velocity, or in other words, allowing a man to be in a passion if the weapon has acquired no velocity, before it meets the skin, or still in other words, if, from the situation of the parties, the velocity and the wound must have commenced together, then, sir, could you say, that an extraordinary blow, such as you supposed to be produced by a paroxism of anger, might be inflicted? The doctor encountered this, and some other of the tremendous interrogatories of the learned gentleman, which have some times been known to confound, and to annihilate, as it were, the intelligence of very respectable, scientific men, with a coolness and adroitness, which enabled him entirely to sustain the ground he had taken; and it was not observed, as the cross examination closed, that Doct. N. retracted any part of the opinion he had given, as the muscular power of the human arm. He, however, closed with one proposition of the learned gentleman, that the wedge-like shape of the instrument in question, while it would obstruct its entrance would proportionately facilitate its exclusion from the wound, and particularly, as respected the more vigorous action of the skin.

The Mayor here interfered as to what he conceived the real question, to wit:—Although it might be difficult, supposing the parties to stand directly face and face, for one, to inflict on another, a wound of the nature described, yet supposing the body to have been in a degree obliqued, whether such a wound might not then have been inflicted? To which, without difficulty, the Doct. replied in the affirmative.

Doctor Francis T. Burjeau Sworn.

Rendered his opinion, in answer to a question of the District Attorney, that such an instrument, passing between the ninth and tenth ribs, through the lungs and heart, might strike the breast bone, and be produced as alleged.

Emmet. And Doctor, don't that depend upon the posture?

The Mayor. I think that Surgeons are called here to speak only on two or three points; as of the nature, direction, and depth or extension of wounds. Scientific men are to be heard, every one in his own line. And I must think when the questions go to the length of the past course in this trial, it is in fact, giving to the witness the province of the jury; and I speak with more confidence, because this question was repeatedly settled in the trial of Selfridge, in Boston. It was repeatedly ruled, on that trial, that medical men, could only be asked questions, strictly within the scope of their particular science. That you can only ask them to an-

over questions, so far as their particular science extends, and cannot put to them inferences and remote deductions—matters particularly and essentially designed to exercise the intelligence of a jury. No other questions were asked Doctor Burjeau.

The prosecution here closed, and Mr. Hoffman, one of the Counsel for the prisoner, opened the defence. He remarked, that never had he risen before a Court and Jury, under the influence of a stronger sensibility, than actuated him on this occasion.* With the public—with the prisoner himself—and with every one else, of a mourning and sympathising community—he most deeply lamented the occurrence which had given rise to the present trial. Mr. Stoughton was a young gentleman of high professional promise. The learned Counsel had himself, been in habits of continued personal friendship with him. A father's pride—a mother's joy! the ornament of an extended circle of friends, who loved and honoured him. Such an event, with such a man, could not but produce a deep sensation, in a community like this, maintaining a proud regard of their moral condition. Such had been the effect, and he felt bound to declare to the jury, that feelings, equally poignant, agitated the friends of the prisoner. He and the worthy deceased were both young men, and both were surrounded with the like society of friends. Had Stoughton a father, a mother, to agonize in the tragic calamity of his fall, so, towards Goodwin, was extended all the charities of the paternal roof; he had a parent, also, to mourn in deep affliction, over the event, which at this hour, darkens his destiny! To him clings a dear sister, following him from afar, and watching over his sufferings and fate! We might see a brother, with dear and affectionate concern, abandoning almost his hopes, in the proud service of our country, to attend him through this agony of his reputation, and his hopes.

Perhaps, never before a jury in this country, he continued, had there been presented, a case more interesting, and the counsel declared himself more solicitous, than he could otherwise have been from the unworthy and unwarrantable attempts, which had been made to influence the public mind against the prisoner. In the Gazettes of the day, he had been

* The sincerity of the counsel, in his opening declaration, will hardly be doubted, for it was remarked by many, that never had Mr. Hoffman surpassed this superior effort of his veteran abilities.

most wickedly branded, as an assassin and a ruffian. And even the most deliberate wickedness, of pamphlet publications, had been resorted to, to defame the young gentleman now at the bar. God, continued he, forbid that I should reproach the father for any participation in these transactions, but I consider it my duty to disabuse your minds of the unwarrantable prejudices, which you may have imbibed.

Gentlemen, in the conduct of the prisoner at the bar, you have seen every thing frank and open; every thing that can be conceived indicative of innocence. He surrendered himself to the demand of the law, when he might have fled—when he might have beaten down the officers of justice sent to New Jersey, with the aid of his surrounding friends; and when he knew that they had no sufficient authority to take him: still did his noble heart revolt at the idea of an attempt to evade the scrutiny of the law, and he instantly conceded to accompany the officers of justice to N. York. He courted inquiry!—To flee from the city, under imputation of guilt, when the "hell-hound Infamy" could let loose all her train upon his reputation, was an idea he could not possibly suffer. He threw himself upon you—upon a jury of his country; to investigate his conduct in the melancholy affair; without prejudice against him, and without pity for the friends of the deceased—and on you does he now rely for an exercise of your magnanimity; such indeed, as should always influence the deliberations of a jury.

Gentlemen, we are aware that no effort has been spared—that no possible means, which could be taken, have been unimproved, to poison the public mind against him.

The friends of the deceased, have been instant and active for his destruction. True, they have suffered a most unspeakable calamity: A mother's heart has been rent—the feelings of a father have been agonized—and a numerous retinue of relatives and friends have been summoned to mourn over his untimely bier. But, Gentlemen, and I say it with the strongest emotion, and I regret that it is my duty to suggest the remark, that the grave should have buried, with so noble a young man, all the vengeance which his dreadful fate might inspire. A verdict of guilty against the prisoner at the bar, cannot recall to life the friend over whom they mourn, and a heart already torn with affliction, should not yield a sanctuary to the demon of revenge. The thought is shocking; but our duty, to the prisoner at your bar, demands of us to encounter in every way, the prejudice with which the public mind is replete.

Gentlemen, although I expressed, at an early period of the trial, an anxiety for the prisoner, I feel, and have all along felt, that, at every step, as the investigation has proceeded, the prisoner became more and more secure.

For my own imperfect exertions, in his behalf, I am conscious I need to claim your indulgence.

Gentlemen, in this trial I feel bound to state to you, most emphatically, that different from a civil case, you are here, the legal and the final judges of the law as well as the fact. To you do we address our most confident appeal; and, while we doubt not that we shall secure your favorable determination, we entertain but little doubt, that the court, also, will be favorably disposed towards us. Let me now, turn back to the testimony at an early stage of this cause—the two witnesses that have been heard, have fully agreed in their testimony. The physicians too, who have been called, were equally unfortunate. Dr. Perkins differs in an important point, from Dr. Mott. The one you remember, and he had abundant means of judging, was of opinion, that the wound in question, which resulted in Mr. Stoughton's death, could not have been inflicted by the arm of a man of common muscular strength—Dr. Perkins, on the other hand, gives you his opinion, that the wound might be inflicted with the weapon before you, without any uncommon strength or exertion. Under such a state of facts, what is the course to be pursued by a jury.

In order to find a verdict, the jury must be certain, and as long as there is ground for a reasonable doubt, you are bound to acquit.

The charge against the prisoner, is, that with the weapon in his right hand, he inflicted the wound which resulted in the death of the deceased.

This, gentlemen, I beg you particularly to remark, and shall show you, from abundant authorities, that even if Goodwin did take the life of Stoughton in that affray; yet if it was done, in a *manner*, different from that which the indictment charges, you are bound, by the strictness of law, to acquit him. I throw this out, because, although we are not afraid; nay, would even desire, to rest our defence on the broad merits of the case, yet it is our duty as counsel, to resort to every legal course so acquit him, and this we do, notwithstanding the wishes of the prisoner, to the contrary. Turning now, gentlemen, to the testimony you have heard—the first witness that was called, was Mr. Clark, a gentleman of excellent character, and whose testimony is perfectly unim-

probable,—I beg you to remark the fact, that he came first to the spot; he saw blows, given with the hand, by Goodwin, and Stoughton fell.—It is in vain to say, unless Mr. Clark was perjured, that the prisoner stabbed, at the same time; and when three gentlemen on the opposite side the street, say that they, at the same time, saw blows on the head, with a cane, there must be some mistake; it could not possibly be; and from the nature of the testimony, you must expect some mistake. Mr. Weir, and two or three others, say they saw Goodwin strike him some blows on the head, even after he was down;—to this, Mr. Baker disagrees,—and Mr. Weed's testimony corresponds ent rely with his. Goodwin pointed at Stoughton as he passed,—Stoughton passed a few steps, when he returned, & struck Goodwin.—Goodwin struck back with the small end of his cane. There is the testimony of Mr. Clark, who saw the blows, and says they were given with the hand—and that it was a blow of the hand, with which, Stoughton was levelled. they perfectly agree in the main point and it is impossible the blows should have been given on the head, as stated, while Stoughton was lying on the ground.

But, the testimony of Clark and Weed, out of the question, Mr. Haycock saw the scuffle, and several blows pass; and says, when Stoughton was down Goodwin struck him several blows on the head.

Now, I put it to you, gentlemen, whether it is possible that such blows could be given, by a man of such strength, and no contusions been produced. It is incredible! Mr. Phelps examined his head, particularly, and found nothing but a scratch near the temple. I do not doubt, but that those gentlemen speak in the sincerity of their hearts; but, such is the power of the imagination, as to distort the perceptions of the best mind; and in the confusion of a scuffle, like this, people rushing up, from all directions, things may have been imperfectly seen, and transactions may have appeared to take place, which, in fact, did not; but which, the broken view of what did pass, may have given rise to.

Never was there such a trial, gentlemen, but the like inconsistencies and contradictions arose. The trial of Selfridge, at Boston, affords the strongest example of the fact. There the strongest sympathies were excited; the people of all conditions were agitated. Selfridge saw Austin approaching him, and knew his object was to assail him with personal violence; he still went on—drew his pistol—met him, and shot him! Yet, with all the excitement, and every thing to prejudice the grand jury against him, only an indictment for manslaughter

was found, and on that he was tried, and acquitted. The best of men will differ in their testimony, as to such transactions; and it is only for a jury to determine on what is the truth, when every thing is whelmed in such confusion. And if there is any doubt—if they cannot find complete ground to rest a verdict upon, they must acquit. Twelve honorable men, in that case, saw where the proof must rest—or rather, that it was impossible that a clear conviction could be formed from the testimony. The best witness contradict eachother. There were doubts, and they rendered a verdict of acquital.

I know that in a case like this, the best witnesses contradicted one another, the strongest sympathies of nature nature are roused and conspire to effect the destruction of the man accused. But, gentlemen, a conviction of the accused will not restore the dead. To establish the guilt of the prisoner, is not to call back Stoughton from the cold slumber of the grave—it is not to restore Stoughton to life, and hope, and all the rich charities of that society, in which, indeed, he was abundantly blest—would to God it could. Goodwin would cheerfully submit to any punishment—to any suffering retributive justice could inflict. Willingly do I assure you, would Goodwin suffer any thing, and to the full extent of the vengeance of his most embittered foes, would such an expiation produce such an effect.

I start with the assumption that when the knock down blow was given, Goodwin had no weapon in his hand. As to the blows, after he was down, I have already spoken. What then can the opposing counsel do. Here is an alternative of which they must take their choice, and either is fatal to their case. Weed says, he saw them both on the ground—that the weapon was not in the hand of Mr. Goodwin, when Mr. Stoughton fell. That is enough, and corroborates the supposition which we make of the manner of the mound. Some one after that, probably picked up the weapon and put it in his hand, though he was unconscious of it; for soon after, he looks at it, with surprise, and instantly throws it down.

Gentlemen, if he is the deliberate and designing assassin he has been described, that last act, he certainly never would have done. The instrument and the evidence of his guilt, he would have taken good care to carry away with him. It was the strongest evidence that could exist, had he been guilty, he would have taken care it never should rise in judgement against him in this court. Instead of that he was deliberately swinging the weapon between his thumb and fingers, at one time and enquiring for his hat.

The contradiction of the testimony, becomes more per-

plexing, as we advance, and is increased by what witnesses have said this morning. The man who sells oranges, says, he saw Goodwin strike Stoughton some blows after he was down, and that he saw the whole affray—yet Mr. Clark was there and says no such thing happened. He says, too, that Stoughton did not strike a blow, and there is not a witness besides, who does not say but Stoughton did strike him.

It is not for me to say, how you shall give your verdict, gentlemen; but it is evident, that the more you hear, the more difficulties arise in the case. I shall now glance at the relations of the parties before the affray, and his surrender of himself into the hands of justice.

Gentlemen, the fact is too true—it was not the pointing of the cane at Stoughton—it was not the approbrious language applied to him, that moved him to commence the assault. Resentment instantly follows insult. If you spit in a man's face, or ring his nose, he instantly revenges the indignity. Such was not the fact here. It was the old hostility. Goodwin passes on, some paces, and Stoughton does the like, before he turns to attack Goodwin. He does return—an opportunity is presented to satisfy the ancient grudge, and he commences a most unwarrantable attack upon him, in a public street. Goodwin resisted, as he had a right to do, undoubtedly. He used no more violence than was necessary. If he stabbed Stoughton, that would certainly make the case more serious; but that fact we deny, or if he did stab him, it was by accident, and would fall under the head of homicide by misadventure, for which he is not answerable.

Again, it may be said, that he used an unlawful weapon. If the intent however was good, that could make no difference. —If when the scabbard was off, he used the butt end to beat Stoughton over the head, and of that we have proof, it shews his innocence. If death had been the object, in the name of common sense, why did he not strike at first? Let me say again, that the blows which are proved upon Goodwin, were lawful, and the death by the dagger, could have only happened by accident, and therefore would fall under the head of that homicide, of which I have spoken.

Let me now turn your attention to the law by which you are to make up your decision. The law of this state, respecting manslaughter, is unreasonable in the highest degree. Here we have no discretion left to the court at all—Three years confinement in the state-prison, is the punishment in every case, and yet the offence varies from the greatest enormity, to cases of a very light description. Manslaughter is de-

fined to be an unlawful killing, without malice express or implied; and in England he court lean to make every homicide, or the killing of a man, below murder, manslaughter. In England, however, the punishment is discretionary with the court, and in nine cases out of ten, the offence and the punishment is merely nominal, while with us, the penalty is three years confinement in the state-prison, whatever may be the nature or attrocity of the case — One case of manslaughter in England, was this, a man caught another in bed with his wife; in a paroxism of anger, he instantly killed him. He was convicted of manslaughter— but discharged with a trifling fine. In our state, however, the act of the husband, though heaven itself, I might say, would approve it, must be three years confined at hard labor in the state-prison. Again, in the case of Sir John Chichester; he was fencing for amusement; with one of his servants; by an accidental pass he killed him. This was adjudged manslaughter * and in this state, would have subjected him to three years incarceration, in the state-prison. I, therefore contend, and from a view of the whole doctrine, in its various applications, that it should not be allowed to prevail in our state.

Every case should turn upon its own merits, which, according to our statutory provisions, cannot be.

Another species of homicide, is called *Homicide by misadventure*, and in this class, Mr. H. contended, ought to be placed the offence alleged against the prisoner at the Bar. It consisted, he observed, in killing another, while in the performance of some lawful act, and without a felonious intent. For an illustration of this species of homicide, he stated the case from the books, that where A, assaults B, B setreats to the wall, and holds before him a sword, or dagger, on which, A rushes, with such violence as occasions his death. This would be homicide by misadventure, or excusable homicide on the part of B.

Various other cases were mentioned by the learned counsel of the same species of homicide; but this, he contended, was strictly a parallel to the case of the prisoner.

B. in this last case, would not only not be answerable with a forfeiture, but it was even questioned whether A. should not be liable to forfeiture of his goods as a *felo de se*. Mr. H. concluded his eloquent opening, by urging upon the jury the duty by which they were bound. In case of doubt, as to the guilt of the prisoner, by all means to acquit him. He thought it im-

* The gest of the offence, was his not exercising due caution.

possible that even, on the evidence for the prosecution, and before a witness was called for the the prisoner, that they should not doubt, at least, of his guilt, if they were not convinced it was their duty to acquit him---He painted the condition of an aged and venerable mother---mourning in the distraction of grief, over the loss of a darling son! of a beloved sister clinging to the fortunes of an unhappy brother! and deeply sympathising in his unhappy fate! of a gallant and patriotic brother, who bore a distinguished command in the American navy; but now, with all the ardour of a brother's love, waiting and watching at the prisoner's side, to witness his approaching doom. By every thing tender and elevated, in the feelings of the human heart, he conjured them to pause and deliberate on the verdict they should pronounce; and, as they valued the future peace of their minds, to withstand the rapid current of popular prejudice, which was setting against the prisoner; and if it were possible, in conscience to acquit him. He also dwelt on the honorable conduct of the prisoner, in voluntarily returning from New-Jersey after the affray, to surrender himself to the hands of a jury of our citizens. Suffering imprisonment, and persecution, said the learned counsel; that the prisoner can bear; but when he learned that one of our respectable citizens had fallen by his hand, and that rumor, with her hundred tongues was blasting his reputation which had never before been sullied; that he could not bear: and with the jury now empannelled, is deposited his fate.

He cited, to the different points of law, 1 Chit.---729. Fos. Cr. L. 281. 4. Blc. 191---199. Sel. Trial, page 6---158. 1. Hale, 480---493.

Hosea Wilder, was then sworn on behalf of the prisoner, and was the first witness called.

I Was walking up Broadway, on the east side, in the afternoon, one day in December last---He saw when nearly opposite to them, two men on the opposite pavement. One was over the other; Stoughton, as it turned out, that his name was, lying on the ground, and Goodwin was over him, in the act of striking. He repeated his blows two or three times. He struck with both hands, and to appearance, on different sides of his head, whether his hands were open or not, could not say: witness ran to separate them---as he approached within half the width of the street, one gentleman went before him, and two or three others arrived about the same time. He saw a man take hold of Goodwin, as he was still reclining over Stoughton, and striking. He remarked you

appear to be gentlemen, I am surprised to see you thus! Goodwin came upon his feet at that instant, and the same gentleman or some other, raised up Stoughton; S. leaned on his shoulder a moment, his head fell back, his countenance changed, and he sunk down. The same gentleman, who I think was Mr. Clark, said a doctor must be sent for—that S. was fainting—S. was then taken up and carried into an adjoining store. By this time, a number of people were collected, and Goodwin inquiring for his hat. Witness saw a weapon somewhere, but can't say whether in G's hand, or not—thinks he must have seen it if he had any in his hand.

Mr. Cambrelling sworn.

On the 21st of Dec. last, I was walking in Broadway, with Mr. G. and on the west side of Broadway, near Courtlandt-street, at the distance of about 40 or 50 yards, saw the deceased approaching to meet them—and said to Mr. G. "There is your friend Stoughton." Goodwin made no reply—but when he approached within about 6 yards, G. raised his cane towards S. and said, "*There goes a scoundrel and coward.*" Stoughton did not seem to hear him; but when they came side by side, Goodwin said again, *there goes a scoundrel and coward.* They passed each other a few feet, and both turned and looked at each other. Witness anticipating a rencounter, drew G. by the arm, and said to him, come along, or something to that effect; and they accordingly resumed their walk, and passed along. They had got nearly across Courtlandt-street, when S. came up to them. G. turned again, and S. said, Do you repeat your words—do you apply them to me? Goodwin answered he did. S. immediately struck him with his hand, or fist, and the affray commenced. S. directly fell. He seemed to fall backwards, and rather on his left side. At the onset, they were both on the side-walk, and the instant before he fell, S. stepped back upon the pavement, and seemed to trip. Witness saw G's right hand the whole time, and observed no stab—but thinks he must have seen the handle of the weapon, had there been one given. Witness came up to them on the right hand, and had a full opportunity to observe if he had the dagger in his hand, while S. was down, and did not see it. On the first blow, the dagger flew partly out, and both seemed to be looking at it—G. took it by the blade with his right hand and followed up his blows, and S. retreated to near the middle of Courtlandt-street and received two or three blows from G. While so taking the dagger, G. appeared to be careful not to use the blade. They proceeded down Broadway in company. As they were passing the store

into which S. had been carried, witness asked some gentleman, how Mr. S. was? who replied, *he is a dead man!* or words to that effect. They continued on, as observed, and G. asked him what he had better do?—whether he had not better leave the state? Witness replied, he thought not—that he could not think S. was much hurt—upon which the prisoner remarked, "but did you not hear some gentleman say he was a dead man?" Upon which, it was concluded that the prisoner had better be out of the way—till he ascertained whether Stoughton recovered. And he accordingly then left the city for Elizabethtown.—When S. fell, Goodwin followed over him, stooping forwards.

Major Richard Smith, Sworn.

Said, that the *sword-cane* exhibited in court, and belonging to Goodwin, had belonged to him; and, the day before the affray, he exchanged it with Mr. Goodwin, the prisoner; that prisoner dined at the same house with him—that just as they were taking their canes to come away, and held them in their hands, standing together, prisoner casually proposed to him, an exchange of canes, and he would preserve the one, he received from witness, as a *keep sake*; to which witness agreed, and the exchange was made. When witness let him have the sword-cane, he had the two parts tied together, with an old leather string, which was rather short, and witness cautioned him, to get a better, or that the dirk might come out. Does not believe Goodwin knew it to be a sword-cane when he first took it. Has known Goodwin from his early youth.

Another witness sworn, was a man who sold oranges, on the south-west corner of Courtlandt-st. and Broadway; name not recollected. He was in a few feet of them, when the affray took place—Said he saw the parties approaching, and within a few feet of him; he then stooped down to remove his basket of oranges, when he looked up and saw the parties engaged in combat. Both their hats flew off in the scuffle.

James Warner, Police Justice, Sworn.

He stated, that after the information of the affray, and of the flight of the prisoner, reached the Hall, the Mayor, and others, came in the police office, to consult on sending a deputation of the police, to Elizabeth-Town, after him; and witness, Hays and Raymond, went on the mission. When arrived at Elizabeth-Town, they went to the public house where Goodwin had stopped, and found him standing in the bar-room, conversing with some gentlemen, and smoking a

segar. The affair of Stoughton was mentioned; Goodwin immediately asked how he was? Witness replied he was dead, and they had come to arrest him, the prisoner. He called out a certain Judge Butler, *(who it indirectly appeared, was a gentleman of some distinction, in one of the southern states)* and told him of what witness had stated. It was suggested, by his friend, that Goodwin could not be arrested by them, and carried out of the state. Goodwin replied, he knew that very well, but that would make no difference, and whatever there was against him he should meet it. Witness said that he agreed with Goodwin, that he had strictly no power to sieze him, but, however, he had determined in his own mind, that if he attempted to escape, he would raise a *hue-and-cry*, and take him in that way. After they returned to the city, Justice Warner took his examination.

Jacob Hays, sworn.

Went with justice Warner, to Elizabethtown, as mentioned. Raymond knew Goodwin, and it was agreed he should first, speak to him, so that Justice Warner might know him: He did so, and Justice Warner told him their business. He answered, at once, that they had no authority to take him, but still he would return to the city with them, which he did.

Abraham Van Valen, sworn.

Was opposite the place, on the east side of Broadway—saw them meet each other, take a round or two, and saw one gentleman fall—saw a cane, at first in the hand of Goodwin---saw part of the cane fall, the dirk part in his hand, striking with the dirk part then holding the handle in his hand, and striking with the blade: observed Stoughton fall; the daggar flew out of his hand six or ten feet: dont know whether he threw it or no. This was after Stoughton made an attempt to rise.

Cross examined.

Says there were several persons present. Dont recollect to have seen Mr. Clark. Saw Goodwin strike Stoughton after he was down, with the blade.

Wm. L. Rose, sworn.

Saw the stick at the Coroner's inquest; it had a leather string, on it—thinks this is the same, though the string is now off.

Hosea Wilder—called again.

Saw a daggar, after they were separated, on the ground near the place where the parties lay. It is *possible* he may be mistaken: he thinks he saw it at the time the person was

leaning. He is pretty positive he did not see it in the hands of prisoner. He gives this opinion now, having thought more on the subject.

James Lovett sworn.

Is the assistant-keeper of the prison. Saw S. the next morning after the affray, and observed his eye considerably *blood-shot* and bruised.

Doctor Schieffelin, called again.

Says he cut the string off the cane, after the affray.

Benjamin Clark, called the second time.

At the time S. fell, he saw the dagger in prisoner's hand. He was holding it carelessly—that was the only time he saw the dagger.

[The counsel for the prosecution here offered to produce proof, that some time before the rencounter, the prisoner had threatened to insult the deceased. The court decided that the evidence was improper.]

When G. knocked S. down, it appeared to be by the force of his blow. His impression is distinct, that the blow given by G. was with his fist, and that he saw nothing in his hand at the time.

Maltby Weed, called again.

While Stoughton was lying on the ground, the dagger was near him in the street. And here the evidence closed on both sides.

D. B. Ogden, commenced the summing up for the defendant. He remarked, that he he had never in his professional life, experienced emotions so powerful and so painful, in rising to address a jury, as on this occasion—I am afraid, he continued, that there is such an overwhelming torrent of prejudice against the prisoner, that in spite of our utmost efforts, we shall be overwhelmed by it. Think not, gentlemen, that I distutst your good sense, or integrity, No—far from it. But, gentlemen, you are men—we are all of us men, and have the feelings and frailties of men. And, I know, of myself, how hard it is—how next to impossibility, when my prejudices are violently aroused to form a cool and dispassionate opinion.

Gentlemen, while I am not to eulogize the unfortunate deceased, far be it from me, that I should condemn him, and would that I could bind up the broken spirit of his mourning friends; but, while I hope, I sympathize with them in some measure, as I ought, I cannot but lament that the affliction they have suffered, had not softened their hearts, rather than awakened the vindictive passions that have been indulged in

inflaming the public mind against my client. No efforts have been left untried to kill him, through the agency of a court and jury. Had Stoughton friends—so has the prisoner at your Bar, and equally poignant must be their sufferings, at this death of disgrace, which your verdict may inflict. In the first place, gentlemen, I will ask you, if there is one among you who does not entertain doubts respecting the guilt of the prisoner and if so, the maxim will apply in all its force that it is better "ten guilty men should escape, than for one innocent man to suffer."! One thing, gentlemen, must strike you as very remarkable, that a transaction so unusual, should not have drawn the eyes of any person, to see the blows! Mr. Cambrelling says, he saw the prisoner's right hand the whole time, but did not see the blow! I ask, gentlemen, could this be possible, if a blow was really struck, and particularly as the wound was between the ninth and tenth ribs, and given with such force as to splinter one of them, which must have required a full blow of the arm. Dr. Mott says, it was impossible to inflict the wound with the strength of a common arm! Doctor Nelson thinks it possible but, he did not, like Dr. Mott, examine the wound, and therefore, was not qualified to determine. I must mention an important fact. disclosed by Dr. Nelson—He says, those ribs are very elastic, from which it must follow, that much more force would be required to splinter it, then if itwere not the case. Dr. Port thinks a blow might be given, but the question was not put to him by the opposing counsel, whether if the dagger were merely put against the side, and then pressed in, it would effect it. Such, however, must have been the nature of the blow. I ask, again, if you do not doubt? if so, you must acquit the prisoner. It may be asked, then, how the blow could have been inflicted? That is a question, however, that we are not bound to answer. The prosecution must prove the fact upon the prisoner. In some way or other the dagger did undoubtedly penetrate the body of the deceased; and, so long as it was possible, that by getting entangled in his clothes, or in some other way, is enough for us. Mr. Cambrelling said, he fell rather on his left side, which would allow the wound to be inflicted by falling on the dagger; and Dr. Mott thinks it must have happened in that way. Again, if it was done with the dagger, by the prisoner, it must have been while standing, or lying on the ground, for the physicians all say it was not possible to inflict it while falling. And it may be inferred from the testimony, that it must have been inflicted

while standing. But, again, gentlemen, can we reconcile that to the evidence. Mr. Clark says, that he saw Mr. Goodwin strike Stoughton a knock-down blow, but then he had not the dagger. Mr. Weed says, the blow was with the cane—that there was only one blow—that the sheath flew off at the time. Mr Weir says, there were several blows, and with him agree one or two more. Mr. Ball says that he struck with the butt end of the dagger; and with that agrees Mr. Goodwin. These, certainly, were all the blows; and, although Mr. Clark says, that he saw no stick when the blow that fell Stoughton was given. The weight of evidence is, that he had the stick in his hand; and I insist that the strong probability is, that the dagger fell from the hand of Goodwin and that Stoughton fell on it.—If it was so, then G's resistance was not unlawful. And, the whole case, is strictly parallel to the case in the book; where one offers another a pot of beer to strike him, and then, seizing the occasion to kill him, is guilty of murder. Repeating the words was not an assault, and Stoughton for that, had no right to attack him, and Goodwin was in every respect justified in defending himself.

The evidence is, that the moment before Stoughton fell, Goodwin had the dagger in his hand, but not immediately after. Clark says he did not see it, till after Stoughton got up and was fainting. Mr. Weed says he did not see it after Stoughton fell; and Mr. Baker says he struck Stoughton several blows, with both his hands, M'Williams says, he struck with the fist—and remember M'Williams was the first on the ground, after Mr. Clark. Another witness says, it appeared to him, that Stoughton had the dagger, when the quaker gentleman came up. Wilder says, that while Stoughton was down, Goodwin struck him first with one hand, and then with the other, and had no weapon. Cambrelling says, that the prisoner did not, and could not, have had it, as he would have seen the handle of it. It is not true, as Mr. Weir says, that Goodwin, was striking, when Stoughton was on the ground, with the stick; but he was not so near, and had not so good a chance to see as the others. He, perhaps, saw him striking with the stick, when Stoughton was up. Mr. Haycock says, he saw him while down: but he, too, was on the opposite side of Broadway; and the testimony of those two cannot be opposed, to the testimony of six who speak to the contrary. The result is, that Goodwin had the stick just before, and just after, Stoughton fell; and it must some how have got entangled in his clothes, and Stoughton fallen on it. One witness says, that Gsodwin

struck Stoughton while falling. Now, if so, as Goodwin could not give the stroke while falling, as has been proved; the dagger dropt from his hand, as he followed S. up, and may at that moment have come to the fatal position. Now, might it not be so? I ask you, if it is not possible? And, if so, then I entreat you, as there is reasonable ground of doubt, to acquit the prisoner. Cambrelling says, that Stoughton appeared to trip, as he was stepping off the curb-stone; and that was enough to occasion his fall, though two of the witnesses say that the blows given, were not alone sufficient. Mr: Weed, it is true, says, that he saw the dagger on the ground, at the instant he was on his back; but I submit it to you, that he would be more likely to mistake the particular point of time, than that the other testimony should be erroneous. Mr. Cambrelling came up, on the right side, where the dagger must have been, at the precise time, and says he did not see it. I have now disposed of all the testimony, except that of Van Valen.—He testified to what I am sure no one of you believes, and I will pass him by without particular comment.

The counsel for the prosecution inform you, that he who commits the first assault in an affray, is answerable for all the consequences; but allowing the law to be with them, they have not shown that G. committed the first assault. It may be said, again, that G. prepared himself with a sword-cane for the encounter, and then provoked it. Gentlemen, the suggestion is false! If he did so, he is a foul murderer! but it is clear, from the testimony of Major Smith, that he took the cane at the casual meeting of a friend, the day previous, and merely as a keep-sake; and that he did not seek or desire the quarrel, is clear enough from the testimony of Mr. Cambrelling; that when the deceased came upon him the first time, he was quite near him, and an encounter seemed to be almost commencing. He turned away, at the suggestion of Mr. C. and continued his walk. He is not the character for a deed of this description. Rash and heady he may be—he may be imprudent, as, no doubt, in that affair he was; and already has he suffered all but the bitterness of death.—He is now before you, to receive justice at your hands, pure and unprejudiced.

Gentlemen of the Jury, you have an office at all times solemn and important in its nature! It is rendered doubly so in this case, by the circumstances, which have conspired to deprive the prisoner of a fair and impartial trial. Let it be, now, to drive from this sanctuary every unhallowed foot, that

has dared to profane its threshold. Rebuke, by your verdict, every wicked disposition to tamper with the laws, and teach, by your verdict, a lesson, which may long be remembered, that "no polluted hand shall touch the pure fountain of justice!"

The partial omission of the able and lucid statement of the law, by Mr. Ogden, in the early part of his address, it is thought, will be supplied by that of his learned colleague.

Mr. Emmet followed, on the same side; commencing with some expressions of deference towards his very able associates. He proceeded, then, to some expressions of sympathy, for the unhappy condition in which the friends and immediate relatives of the deceased were placed, by the calamity which had befallen him; and how dreadful to them, would be the consummation, by a verdict against him. All, he said, would acknowledge a desire, if consistent with justice, for his acquittal. All would desire that he may be proved innocent; and all would desire, that a dear and aged mother, a lovely sister, and a gallant brother, who sustained a high rank in the American navy, might be exempted from the pangs they would endure, should the Jury unhappily convict him. The deed of horror struck him at first, in a way he should in vain seek for words to express; but occasion calling him, afterwards, to the society of the prisoner, he assured the Jury, not half an hour had elapsed, before he was impressed with a conscientious belief, that, with the blessing of God, his counsel would be able to see him once more restored to the light of day, and to the society of his extended circle of friends. That conviction, he could sincerely declare, had gained force, at every step the trial had advanced. The deep and consuming prejudice which had been excited against him, had rapidly passed away, and, he trusted, would not be permitted to diffuse its baleful influence, in the sacred hall of justice.

Let me, while I think of it, advert to a question which has been asked on the other side, whether Goodwin was not a military man? Gentlemen, is it meant to be intimated, that the camp is the school of assassination? Is this the language of an American? Was it at New-Orleans, defending our country against the most formidable array that we had to encounter during the war, that Goodwin was to learn the sentiments of an assassin? No, gentlemen of the Jury, if he was a military man, he learned honor in his profession, which exalts and refines the mind!

And, now I must show, gentlemen, that the death in this

case, was not by a stab, but by falling on the dagger. The evidence is, that the prisoner held the dagger by the blade, unchangeably, and at the time when only the blow could have been given. Mr Ball says, he was striking with the butt, immediately before he fell, and then with his hands. Mr. Cambrelling says he was striking with the butt when Stoughton fell, and such was the current of the testimony. Instantly on Stoughton's being down, the dagger was not in Goodwin's hand, and how then is it possible Goodwin could have stabbed? though the physicians tell you the stab could not have been when falling. The testimony is indeed somewhat inconsistent, but that circumstance alone is sufficient to excite doubts in your minds; and if a reasonable doubt exists, it is your duty to acquit. The testimony of those witnesses who had the best opportunity of seeing, goes clearly to show that such was the state of facts; and in a question where so much passion has been excited—so much conversation had—and so much, in every shape, to confuse and perplex the minds of witnesses, as appears in the present case, the testimony of those who were nearest, and had the most distinct perceptions of the case, it seems impossible, on a fair construction of the testimony, to entertain any other belief, than that Stoughton in some way fell upon the dagger, and thus received a fatal wound. The difficulty of striking the blow with the strength of a common man, which you have heard so much discussed, goes strongly to corroborate the supposition. So violent a blow, too, and necessarily requiring so great a motion of the arm, could not have been inflicted without observation. The stab, then, is not chargeable on the prisoner.

Some of the witnesses however, say that the blows which were struck on the head of Stoughton were not sufficient to bring him to the ground; but Mr. Cambrelling, you will remember, tells you that Stoughton appeared to trip as he stepped back upon the pavement, in the direction he fell; and the trip with the blows would have produced the effect. And was the conduct of Goodwin after the affray that of a murderer? Conscience, it is said, makes cowards of us all; but he did not hurry from the scene! He did not even attempt to conceal the dagger! he consults with his friend; then proceeds leisurely to New-Jersey—and when called upon, by the ministers of justice from our city, and told that Stoughton was dead, willingly and promptly returns to submit his conduct to investigation, and wipe away every stain which calumny might affix to his reputation in the affair.

No doubt, the catastrophe was a dreadful one! but the

great point for you to settle, is, whether voluntary guilt can be imputed to the prisoner at the bar? If not, I exhort you, as you hope for mercy before that God, who is to judge us all, to look without prejudice or passion upon his case.

That this prejudice, hostile as it is, to the pure administration of justice, had been formed in misconception, he was well convinced. We have here for our hope, and consolation, to render praise and gratitude to the redeeming spirit of a jury; --To you as judges of law, and fact, though confident the court will be with us, and explain to the jury the principles on which the prosecution rests; it is still my duty, continued he, to give the law, in as concise a manner, as he might be able. He should present them a case, which had been much examined on different occasions, from Foster's Crown Law, page 255. The counsel for the prosecution, must in the first place, prove, that the fact alleged had been committed, and how,--that in this case it had not been done; much less has it been proved that the prisoner slew him. But if it were proved upon us, it a defence that will save us, if it was done by accident, necessity, or infirmity.

In this case, the indictment alleged, that on the 21st Dec. 1819, with a sword, or dagger, or sword-cane, grasped in his right hand, he inflicted on the body of James Stoughton, a wound. Now, if we prove to you, gentlemen, continued he, that this wound, though it might have been inflicted by the dagger, or sword, in question, yet, that the sword was not in the hand of the prisoner,--the evidence will be variant from the words of the indictment, and, therefore, a verdict of acquittal must follow. We trust, gentlemen, the evidence has already shown it to your satisfaction.

He cited, Cr. Cir. Ass't. 306. 2 Hale, 184. Hawkins, b. 1. c. 5. sec. 82. The prosecutor had not reached the goal, he had pledged himself to, and the indictment must therefore fail. The learned counsel begged it to be distinctly taken down, and understood, that to constitute manslaughter, the killing must be voluntary. Therefore, if it was not an unlawful and wilful killing, it could not constitute the offence, and to this point he cited the definition of the learned C. Justice Parker, of Massachusetts, in the laboured case of Selfridge.

Manslaughter *must*, in one word, be the voluntary and designed act of the party commiting it. It must, by the de[illegible]tion of the learned Judge, referred to, be a wilful a[illegible] proceeding freely and purely from the w[illegible]. The ca[illegible] is recorded in the books, where one enters the ya[illegible]

other, to shoot poultry, without authority, and accidentally kills the owner, it is said to be Manslaughter, but I confess I cannot read such doctrine, without my blood curling with horror. So in Ward's case, 15, East, 420, where one is killed by a blow in a boxing match, although never intended. So in Sir John Chichester's case, where in parrying with his servant, he accidently stabbed him; this I will venture to say, is the hardest case on record. So in Snow's case, where the Son came home and abused his Father; another Son held him down and drew a pen knife, and with the same, killed him, without meaning it, Hale, 580. If in an affray, B retreats to the wall, and A. follows him, and runs upon his sword, it is only death by misadventure. Now what is the difference in this case. If the death is not occasioned by an act proceeding from the will, it is only homicide by misadventure, and independent of all books, God forbid, that a man should suffer, as for an act of wilful atrocity, when he has done nothing inconsistent with the best intentions. If it was a mere matter of damages at Nisi Prius, the doctrine, might be shaped to the case. In England, the punishment is left to the discretion of the court. But by our statute, the discretion, it is to be lamented, is taken away. By a connection of legal subtilties, a man of the purest honour, or the most exalted condition in life, may be blasted and consigned for three years, as a convict among ruffians in the state prison.—I am almost bold to say, the legislature never intended to punish with three years of imprisonment and infamy, in a case where there is not a shadow of criminal intention. And in this case, I do seriously contend, that if you find that after the blows were given, Stoughton fell back upon itthe dagger, is impossible for you to convict the prisoner at the bar; it is no matter whether the prisoner's conduct was lawful or not, provided he had no voluntary agency in the deed.

In Lord Coke, 3 Inst. where one causes the death of another, by an act not unlawful nor with any illegal intent, it is not murder.—Another principle may be adverted to, as derived from the English law.—His Majesty's officers are bound to exercise lenity in the performance of their duties; they are not to hunt for a forfeiture, where it is a matter of doubtful right—Foster, 263. Then what should be the conduct of a jury in a question like the present, where you have a duty infinitely above a coronation oath—a duty to the great God you worship.

To advert again to the case of Sir John Chichester. If

his case can possibly be justified, it is on the ground that he did not exercise due caution. But here in a like case, we have it by the testimony of Mr. Cambrelling, that the prisoner used more than ordinary caution in changing the dagger so as to get it by the blade in his right hand, and even received two blows from Stoughton while he was doing it!

Some cases have been cited by gentlemen for the prosecution, which are applicable only to murder, but the authorities which we wish to have you regard, are, as they ought to be, only applicable to the offence immediately before us. Two cases they have cited to make it appear that Goodwin by pointing the cane, committed the first assault. But it is most clear, gentlemen, that it was only used to designate the person of Stoughton, and indeed, had no real connexion with the affray. Stoughton passed on some distance after the cane was pointed at him; his back was to the prisoner, & he turned and came deliberately back, and commenced the attack, when all apprehension he could have entertained was over.

Mr. Griffin here commenced the summing up for the persecution.

Gentlemen of the Jury,

It is now the period when in the course of this trial, it has become my duty to address a jury of the country on a most affecting and deeply interesting occasion—The 21st of December, 1819, will be a day long to be remembered in the history of our country—On that day, our city was alarmed not with the cry of fire! but with the cry of murder.!

On that day, a most intereresting and excellent young man fell by the hand of violence, in one of our most public streets. The prisoner charged with his death, has now been brought to trial; and day after day, have the administrators of public justice, in the kindest manner, been engaged in investigating the crime, with which he stands charged; and in no age or country, could he have enjoyed the aid of more able counsel. If you can think him fairly entitled to an acquital, I say, in heaven's name do acquit him!

It has been rather unnecessarily insinuated that the friends of the deceased have sought revenge against the prisoner at the bar. If, gentlemen, a man has in the face of day broken both the laws of God and man in our streets; and, with the hand of criminal violence taken the life of an esteemed fellow citizen, and such deeds are attempted to be supported, Mercy herself, angeleyed, and heaven-hearted as she is, would kindle in vengeance at the thought. That a homicide has

been committed, it is too true; and this day is an enquiry to be determined, whether or not it was committed by the prisoner at your bar. The testimony we have heard, has not been altogether so consistent a satisfactory as it were to be wished; but among such a number of witnessess, it would be strange indeed, if some disagreement should not exist. But all the great features of the case are alike, and all the witnesses except Van Valen, whose testimony I do not, myself think is entitled to all the severity it here received. He may be wrong, but I still think him sincere. A great difficulty with the prisoner's counsel is to account for the fatal blow without the arm of Goodwin being perceived. To my mind, all that difficulty is removed by considering that he were a large cape, coming quite below his elbows, and that it must have been an underhand blow.

Permit me one remark here, on the nature of the testimony. It is a common error, that circumstantial evidence is considered less forcible than positive; but the fact is the contrary. Circumstances have been called nature's testimony, and cannot err while witnesses may be corrupt.

The mortal wound in this case, was either received, by falling on the dagger, or inflicted by the arm of Goodwin. The first, was, in the nature of things impossible. To effect it, the dagger must have stood upon its hilt, with the point upwards, but it cannot be made so to stand! and, as there was no snow, nor mud, and as the curb-stone was at a distance, and as the end of the dagger was not flat, it would take a miracle to make it stand! Then all the witnesses say, except Mr. Cambrelling, that he fell on his back. Cambrelling thinks he fell rather on his left shoulder. I wish, and would to God, any one could tell me how! In the next place, how could it get out? The physician, say that very possibly it might do so, and I give them all the advantage of that; but, the fact, certainly was, according to the whole current of the testimony, the dagger was in Goodwin's hand till Stoughton fell. The evidence on that is so clear, that charity, herself, could not doubt. M'Gowan, Ball, Weed, Van Valen, seven in the whole, say positively, that Goodwin used it till Stoughton fell. Mr. Cambrelling was the friend of the prisoner, though, to his eternal honour, do I mention his candor, he corroborates the fact! If then, Stoughton was down, while yet Goodwin held the dagger, how can the wound be accounted for, in that way? He had it in his hand too, so short a time after, as to preclude the idea that it was out of his hand at all!

A witness who was standing on the corner with oranges, saw Goodwin strike Stoughton with the butt of the dagger,

and Stoughton retreated till he fell; and last, though not least, Leonard Baker saw Goodwin throw away the dagger after Stoughton was down.

If this evidence be correctly stated, is it possible to doubt when and how the blow was given? There can be no doubt; and I trust in God, that the time is far distant, when the eloquence of any counsel can pervert the course of justice, or overwhelm that sacred divinity in her chosen retreat. Now, gentlemen, with this array of proof, are we to hear the cry of persecution, raised against the prisoner at the bar?—I have shown to you, gentlemen of the Jury, that the dagger was in the hand of Goodwin! both before and after Stoughton fell; and may I not now ask you, if it was ever out of his hand!

The counsel rely on the situation of the parties, and the want of strength in Goodwin to strike the blow! But remember, gentlemen, that Stoughton was an inexperienced fighter; and his situation was changed every moment. I heard it stated, to my astonishment, on the other point, by the first of the surgeons who was examined, that no common arm, in these our days, could strike with sufficient force to produce the wound; but the testimony of the other surgeons, renders it clear enough that it might: nay, your experience of your own strength, every one of you, is sufficient to satisfy you, that that dagger, with the strength of a common arm, could be driven, not only through the body, but through the breast bone.

The eloquent counsel went into a fine encomium on the common law, tracing to its wise provisions, the safety and happiness of all orders in our land, and exhorting the Jury against the effect of any attempts which had been made to render any of the principles of it odious and abhorrent to their minds. He hoped in God that the time was not yet come, when the eloquence of counsel was to change to innocence those deeds which our Fathers had viewed as crimes, and against which they had thrown round themselves and their posterity, the awful munitions of that great and venerable code.

He adverted pathetically to the affray, and with warmth he asserted that it was not Stoughton, but Goodwin, who gave the first blow, not a blow, indeed of the hand, but a blow of the tongue; a blow more poignant, than the scorpions sting; a blow more sensibly felt, than that dagger. He trusted he knew what it was to feel for the fortunes of a son, and to appreciate what kind of sentiments he knew he must teach him—the humble precepts of him who spake as man never

spake. He who could bear such an attack as Stoughton received, would atchieve a sublime point of virtue. He that can bear it exclaimed Mr. Goodwin does well, but to do it, one must be more or less than man. He must have much of the celestial or brutal nature, and yet, continued he, the hunted down Stoughton has been called the aggressor! I hear the voice of Stoughton call on me from the grave, to vindicate his memory from the foul stain! and yet I hear my learned opponents talk of magnanimity!

As to the law which should govern the jury in making up their decisions; whenever a man uses an unlawful weapon against another, and death ensues, he uses it at his peril. Even if the dagger lay on the ground, being introduced by Goodwin into the affray, though he denied that the dagger did fall to the ground, as contended. The case of Sir John Chichester, which the opposing counsel has so severely controverted has been recognized by the great and good Sir Mathew Hale, who was so remarkable for his lenity, as well as by Sir Michael Foster, and by each on solemn argument, & he trusted was not to be shaken to give place to crudities of the present day. It would be dangerous to the daily peace of our lives to allow for a moment, that the unhallowed doctrine contended for, should be established. Murder would stalk triumphant among us, and a patent, as wide as the land, be granted to assassination. The conduct of the prisoner at the time was commented on by Mr. Griffin in indignant terms. So cool, so calm, so deliberate when amazement sat on every face, and honor chilled every heart, evinced a soul, but too familiar with bloody and desperate resolve.—No solitude for his victim! no anxiety to see a surgeon called, or even to make one enquiry for the fate of that victim whom he had seen lying ghastly and wounded at his feet!—No, like Cain, he fled, and when summoned to return, the air of frankness he assumed but poorly hid the consciousness he felt, that it was in vain to flee. Equally vain is it gentlemen, to tell us 500 men would have risen to his rescue had he craved their aid. Little do they know of the character of the people of New-Jersey, who venture so slanderous an idea of them.

You have heard of a venerable mother, an amiable sister, and a gallant brother, who are waiting in cruel suspense the fate of the prisoner. The ties of nature I trust, we are all able to appreciate, but what gentlemen, have they to do as to the guilt or innocence of the prisoner, or to your consequent determination the law, too, well knew the force of those ties, and has set the awful sanction of an oath upon your souls.

these sentiments, you will not, you dare not forget, and much as the severity of his present condition, I fear if he had been put on his trial for murder, he would have had to go through a more perilous ordeal.

I admire the talents and sensibility of the counsel, but, Oh, gentlemen, have they not yielded to the force of their sensibility, too far, when they have profaned with unhallowed hands, the sanctuary of a broken heart, with insinuations such as we have heard. Could not a venerable father, broken hearted, and bowed down, and the mourning circle of the paternal roof be adorned be allowed to weep over their sorrows, unmolested. Must they be now insulted with the charge of interference, to provoke the severer vengeance of the law against the destroyer of their peace? Gentlemen, I have done, and may God direct and enlighten your decision.

MR. WELLS.

Gentlemen of the Jury,

In discharging the ordinary duty of counsel, in a case so intimately relating to a young man, of unusual worth, whom I loved as my friend when living, and lamented in death, I fear it will be a harder task for me to struggle with my own sensibility, than possibly it might, to make an impression on yours.

While gentlemen have respected the memory of him, why have they deserted his friends? Why not let the "stricken deer go creep" in solitude and silence? why not leave them to mourn alone over a loss your verdict cannot restore; and seek consolation from the source from which all solace must flow? Gentlemen, I must animadvert upon those charges, and pronounce them as cruel as they are unfounded.

In proceeding with the consideration of this cause, it is my purpose to touch only on the striking points, and I much misjudge if the result of our laborious inquiry, is not a verdict of a painful nature to the defendant.

Let us look at the general outline of this cause, and see if we do not find the object of his walk from the City Hotel, to throw himself in the way of the deceased, and to incite a quarrel. If that was not his design, what would have been his conduct? Seeing the deceased 30 or 40 paces off, his companion, Mr. Cambrelling, says to him, "There is your friend Stoughton." If he meant nothing, whence his altered feelings? All was suddenly repressed and silent! They approached within a few feet—he significantly raises his cane towards Stoughton, and says, "There goes a scoundrel and coward!" And in passing, repeats the infamous charge!

Gentlemen, do you believe there was no defined object in this conduct? Can our language afford a more provoking expression? He knew his man! He knew Stoughton would resent it! He must resent it, or stand branded with the basest cowardice, an attribute I will not impute to him; for I, and all who knew him, would have seen him dead rather than disgraced. This Goodwin knew; and he knew also, that he himself bore about him a deadly weapon. This Major Smith had told him, when he lent him the weapon, and cautioned him to secure the blade! He uses that weapon, and we next see Stoughton panting and dying at his feet!—That it was done in self defence his counsel do not pretend to say; and, when pressed, they attempt to turn it to *homicide by misadventure.*

Homicide by misadventure only means the killing of another, by the merest casualty, and never, surely, by an act fraught with vengeance like this. The contest follows. The prisoner attacks the deceased at once, with this weapon; drives him back a considerable distance, when suddenly, and to the surprise of the by-standers, without the apparent application of any adequate force he falls! That Stoughton, fell upon the dagger, is the last of all possible casualties. We prove a positive, murderous aggression. The prisoner offers nothing beyond conjecture, and forced deduction, to support his defence; and unless your lenity overshadows your judgment, and you prepared to break down all the salutary monitions of law, you must convict him. The only countenance the prisoner deserves from any quarter, is from the unaccountable opinion drawn from Dr. Mott, and which I know your common sense rejected. Mr. Cambrelling's testimony alone will convict him! He says he saw the dagger slip partly out of the sheath—that Goodwin took it by the blade, and struck Stoughton with it, and presently he fell. Stoughton then rises, sustains himself a moment, and then sinks to everlasting rest.—Mr. Cambrelling says it is too much for him him to say, that he saw Goodwin's right hand the whole time, and that, was the moment while his eyes were withdrawn, that the blow of death is inflicted under the partial cover of the wide capes of his coat, and at the moment he fell he had the dagger in his hand as is shewn by four or five witnesses. But even when on the ground, his vengeance is not satisfied, and he continued his blows.—Can you, doubt, gentlemen, that Stoughton came to his death in the manner I have described! but if you will yield to the arguments of a powerful and firvid oratory, you will believe that no danger

remember at all. That Stoughton is not dead but living! And so you might as well believe, as that he was not slain, by a dagger, firmly grasped in the hands of Goodwin. If you would have facts in an argument, connected by adamantine links, you have them now, and if you can doubt, on the testimony in this case, or allow a false lenity to pervert your judgments, as well may our courts of justice at once be closed!—As well may all the strong mounds of justice be broken down! and misrule and murder, let loose to riot on the land!

His honor the Mayor commenced his charge to the jury, by remarking the hour was now so late and he was himself so much exhausted, that he did not intend to recapitulate all the evidence minutely. One feature of a prominent nature he would notice at the outset. It was not necessary, as contended by the counself or the prisoner, that the act should be strictly wilful and designed in order to constitute the killing manslaughter, though such was the defination of it by a learned judge in a sister state—Judge Parker in the trial of Selfridge, at Boston, did certainly so define it, but there was not another authority, his honor the Mayor presumed, in any book to sustain the de n tion, and as that trial did not turn materially on the definition, he conceived it must an oversight of the learned judge. The act must, indeed, have been voluntary, in that sense wilful. The leading fact to be proved on a trial like the present, is here too lamentably true already; that is, that a homicide was committed. An intimation has been made, that the sword-cane by which the deceased was killed, was procured from Major Smith for the purpose; But, I think the testimony of Major Smith has settled the question—that he did not procure it for that purpose. It is also sufficiently clear, I think, that he had the sword-cane at the commencement of the affray, and that he used it till the time that Mr. Stoughton fell. After that there is much doubt and confusion as to the manner of his coming, but I apprehend you will agree with me, that he had it after Stoughton fell the second time. There is a strong apparent contradiction, as to the fact, whether the prisoner stabbed the deceased, or whether he fell upon the dagger, and in that way received the wound, nor do I think that point at all material. whether the prisoner fell upon the dagger. To the matter of this indictment, it is the same. Were it a trial for murder, it would be material.

His Honour continued, that, as he had no doubt on the question, he conceived it his duty so to inform the Jury. He had no doubt, that Goodwin did use the cane, in the affray. and that Stoughton came to his death, in consequence of his having introduced it. Mr. Clark, the first witness, it is clear

did not see the whole, which was likewise the case with some others; which is the cause of so perplexity. Mr. Cambrelling has given us the fullest and most satisfactory account; and is a particularly valuable witness, as well for general good reputation, as for the candor he evinced. Mr. Cambrelling says, that the deceased struck the first blow; that Goodwin then struck back with the cane; the sheath came partly off; he took the dagger part by the blade, renewed his blows on the head of the deceased, drove him back, and he directly fell. This is the account Mr. Cambrelling gave of it, and it is a clear principle, that one positive witness is more to be believed than many negative witnesses.—Mr. Clark thinks prisoner struck first. Mr. Baker, too, says he saw the whole, but saw no cane used. The better testimony, however, is, that it was used; and it is my duty, though you are judges of the law and the fact, to state to you the law. It is the same here as in England, except as to the punishment, which is an absurdity of our code, for it makes no difference in the different degrees of enormity. But with that you have nothing to do.

Manslaughter is the unlawful killing of another, without malice, express or implied. As if, according to the case put by the counsel, one unlawfully goes into the yard of another, to shoot his poultry, and kills the owner, this is manslaughter. There is another kind of homicide, called homicide in self-defence; as when a man is violently set upon, and to save his own life, takes the life of the assailant. His act is excusable, and was dictated by the first law of nature. Now, the question I conceive, gentlemen of the jury, for you to settle is to which of these two cases belongs the act of the prisoner; and the solemnity of an oath you must determine it. For my own part, I told you before, I can have no doubt—I cannot believe. There is no evidence, on which to found a belief that the prisoner was to set upon as to feel his life in danger, and to feel a necessity to take the life of the deceased, in defending his own. His weapon was an unlawful one; Cambrelling says, he was the better man, and the deceased was retreating from him. He should have thrown away that unlawful weapon;—by persisting in the use of it, the life of a fellow-citizen has been taken, and I conceive he is justly amenable to the offended laws.!

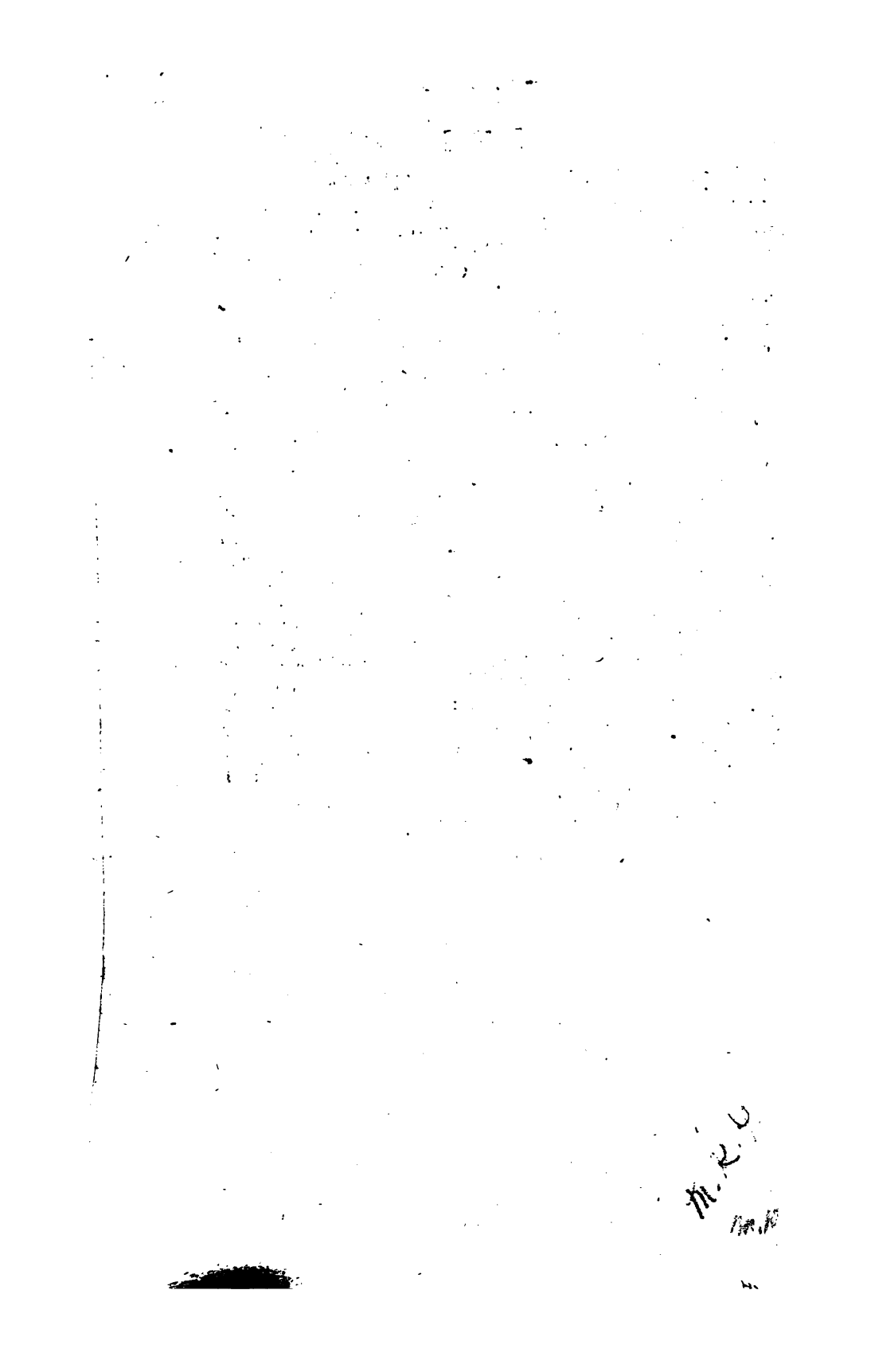
☞ The trial continued four days—the three first in the examination of witnesses, and the fourth was wholly consumed by the very able arguments of the several counsel employed

in the cause, and the luminous charge of his honor, the Mayor, which was closed at 2 o'clock, Saturday morning, March 18.

On Saturday, March 18, at a quarter past 6 P. M. the Jury returned a general verdict of *Guilty*. On being polled, they disagreed, and were again sent out. At 11 o'clock at night the Jury was called into court, and on being asked if they had agreed? They replied they had not, and that there was no prospect of their agreeing. Whereupon the Jury was discharged.

*** On Saturday application was again made by Mr. G. to admit him to bail; but refused. He was remanded to prison to receive a second trial at the April Sessions.

On polling the Jury, the first juryman, answered *guilty*; the second, *guilty*, with a recommendation to mercy; and and the third, *not guilty*. This reply threw the court into consternation for a short time; but order being restored, one of the jurors rose and asked the court for an explanation of some legal points. The Mayor clearly explained them. The prisoner then rose from his seat in the criminal's box, and begged for permission to make a few remarks. His request being granted, he, in a tone well calculated to operate in his favor, requested that his confession, made before His Honor the Mayor, on the evening of the day of the unfortunate rencounter, might be read, which would explain the whole transaction, and remove any mystery that might appear in it. The Court, however, decided not to grant the request, as he had had abundant time to present it properly. When the jury returned, at 11 o'clock, P. M. and informed the Court they could *never agree!!!*



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